STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

. . . . . .

August 2, 2016
Nokomis Room
Centennial Office Building

. . . . . .

MINUTES

The meeting was called to order by Vice Chair Rosen.

Members present: Flynn, Greenman, Leppik, Oliver (arrived during process for selection of new chair)

Others present: Goldsmith, Sigurdson (left during discussion of process for selecting new executive director), Pope, staff; Hartshorn, counsel

The meeting did not strictly follow the order of business set forth in the agenda

PROCESS FOR SELECTION AND SETTING TERM OF NEW CHAIR

Mr. Goldsmith provided members with a memorandum on this topic that is attached to and made a part of these minutes. Mr. Goldsmith told members that because Member Sande had left the Board before his term as chair was complete, a new chair would need to be chosen. Mr. Goldsmith said that because the typical term for a chair was a calendar year, members also would need to determine whether the new chair would serve until the end of 2016, the end of 2017, or some other date.

Members decided to return to this topic at the end of the meeting.

CHAIR'S REPORT

Meeting schedule

After discussion, Board members decided to move the meeting day and time to 10 a.m. on the first Wednesday of the month. The next Board meeting is scheduled for 10 a.m. on Wednesday, September 7, 2016.

Resolution recognizing the service of Christian Sande

Vice Chair Rosen told members that Mr. Sande had resigned from the Board due to his appointment as a district court judge.

After discussion, the following motion was made:

Member Rosen's motion:	To adopt the following resolution:

RESOLVED, that the Campaign Finance and Public Disclosure Board recognizes Christian Sande for his service from 2014 to 2016 as a member of the Board and offers this resolution in appreciation for his investment of time and energy in support of the mission and objectives of the Minnesota Campaign Finance and Public Disclosure Board.

Vote on motion:	Unanimously passed.

Process for selection of new executive director

Mr. Sigurdson left the room during the discussion of this topic. Mr. Goldsmith reminded members that Board employees are unclassified and serve at the pleasure of the Board. Therefore, the steps that must be followed to hire a person in the classified service do not apply to the hiring of Board staff. Mr. Goldsmith then reviewed the processes that had been used to select past executive directors. In some cases, the Board had hired a candidate for the position without conducting a search. In other cases, the Board had launched a search to fill the position. Mr. Goldsmith said that based on this history, the Board had these options: 1) to choose a candidate for the position without conducting a search; or 2) to direct the executive director to work with Minnesota Management and Budget to launch a search to fill the position.

After discussion, the following motions were made:

Member Flynn's motion:	To select Jeff Sigurdson as the new executive director.
Vote on motion:	Unanimously passed.
Member Greenman's motion:	To authorize Vice Chair Rosen to negotiate a salary and an effective starting date with Mr. Sigurdson.
Vote on motion:	Unanimously passed.

<u>EXECUTIVE DIRECTOR TOPICS</u>

Office operations

Mr. Goldsmith told members that since the last meeting, staff had been busy with pre-primary-election reports. These reports were due in late July from all campaign finance entities registered with the Board. Mr. Goldsmith said that the website project was moving ahead but that he would not promise a beta release date. Mr. Goldsmith said that he hoped for release of the test version by September 1. Mr. Goldsmith also said that he hoped to demonstrate the new website for members at the September meeting.

Board investigations authority and process

Mr. Goldsmith presented members with a memorandum on this topic that is attached to and made a part of these minutes. Mr. Goldsmith told members that the memorandum analyzed the Board's statutory authority for initiating investigations, outlined other issues that the Board should consider in its analysis of this matter, and discussed the need for and effect of layover motions in different situations. Mr. Goldsmith said that the memorandum was a starting point for discussion and comment.

Mr. Hartshorn told members that he and other attorneys general had reviewed the memorandum and found the legal analysis in it to be sound. Mr. Hartshorn cautioned, however, that the memorandum and its analysis did not guarantee that the Board would not be sued or lose a lawsuit on these issues.

Ratification of Affirmative Action Plan

Mr. Goldsmith presented members with a memorandum on this topic and an Affirmative Action Plan that are attached to and made a part of these minutes. Mr. Goldsmith said that the Plan was based on the State of Minnesota template and included all provisions required by statute.

After discussion, the following motion was made:

Member Flynn's motion:	To ratify the Affirmative Action Plan.
Vote on motion:	Unanimously passed.

Fiscal 2017 budget

Mr. Goldsmith presented members with a draft budget for fiscal year 2017 that is attached to and made a part of these minutes. Mr. Goldsmith reviewed the budget with members and answered questions.

After discussion, the following motion was made:

Member Oliver's motion:	To adopt the draft document as the Board's working budget for fiscal year 2017.
Vote on motion:	Unanimously passed.

Review of noncampaign disbursements

Mr. Sigurdson presented members with a memorandum on this topic and a noncampaign disbursement guide that are attached to and made a part of these minutes. Mr. Sigurdson told members that the guide was intended for campaign staff, legal counsel, and more experienced candidates and treasurers. Mr. Sigurdson said that staff next would add the information in the guide to the candidate handbook using a style more appropriate for individuals new to the requirements of Chapter 10A.

ENFORCEMENT REPORT

A. Discussion items

1. Request for balance adjustment – Aitkin County DFL - $540.89 in excess funds on report.

Mr. Sigurdson told members that the Aitkin County DFL was asking to adjust its 2014 ending cash balance from $3,455.26 to $2,914.37. This was a discrepancy of $540.89. Mr. Sigurdson said that the treasurer had determined that the discrepancy occurred sometime in 2014 but had not been able to find the precise reason for the discrepancy. The party unit's 2015 year-end report showed all of its financial transactions for that year and reconciled to its year-end bank statement. The party unit registered with the Board on September 12, 1984.

After discussion, the following motion was made:

Member Leppik's motion: To grant the Aitkin County DFL's request for a one-time cash balance adjustment.

Vote on motion: Unanimously passed.

B. Waiver requests

Name of Candidate or Committee	Late Fee & Civil Penalty Amount	Reason for Fine	Factors for waiver	Board Member's Motion	Motion	Vote on Motion
DFL Disability Caucus	$150 LFF	4/14/2016 1st Quarter Report	Treasurer was in hospital around the filing deadline. Filing information was forwarded to deputy treasurer who then filed report.	Member Leppik	To waive the late filing fee.	Passed unanimously.
Jon Tollefson	$75 LFF	6/15/2016 Lobbyist	Lobbyist mistakenly believed that his registration authorized another lobbyist to report his disbursements. Lobbyist's registration has now been amended to correct this misunderstanding.	No motion		
Ottertail Power PAC	$700 LFF	4/14/2016 1st Quarter Report	Treasurer lost access to filing software for a period of time due to changing positions with her employer.	No motion		
MPA (Minnesota Psychological Association) PAC	$50 LFF	6/14/2016 May Report	Treasurer had turnover on her accounting team and was not in the office prior to the filing deadline.	No motion		

Informational Items

A. Payment of a late filing fee for 2016 1ST Qtr report of receipts and expenditures:

Republican Liberty Caucus, $100

B. Payment of a late filing fee for 2016 June report of receipts and expenditures:

Austin Chamber Business Leadership Committee, $25
Dominium Political Fund, $25
Grand Portage PAC, $50
Minn Gun Owners Political Action Committee, $25
Minn Thoroughbred Association PAC Fund, $25
Road PAC of Minn, $25
Take Action Political Fund, $25

C. Payment of a late filing fee for annual economic interest statement:

Jay Estling Jr., Roseau SWCD, $50
Nancy Paddleford, Perpich Center for Arts, (termination) $100

D. Payment of a late filing fee for candidate economic interest statement:

Jason Metsa for House, $5

E. Payment of a late filing fee for January 15, 2016, lobbyist disbursement report:

Patrick Lobejko, MN Pharmacists Assn, $75

F. Payment of a late filing fee for June 15, 2016, lobbyist disbursement report:

George Crocker, Community Power, $150
Gerald Cutts, First Children's Finance, $25
Doug Franzen, Natl Insurance Crime Bureau, $100
William Haas, White Earth Band of Chippewa, $25
Robert Hentges, MN Govt Relations Council, Family Partnership, $50
John Knapp, Fan Duel Inc, McLane Company, $50
Dan Larson, MN 4WD Assn, $50
Joseph Olson, Bicycle Alliance, $50; Gun Owners Civil Rights, $25

G. Payment of a civil penalty for misuse of committee funds:

Tim Manthey, $100 payment

RULEMAKING PETITION FROM GEORGE BECK

Mr. Goldsmith presented members with a memorandum in this matter and a draft response that are attached to and made a part of these minutes. Mr. Goldsmith told members that each year the Board considers topics for potential rulemaking and includes money in its budget for any rulemaking undertaken. Mr. Goldsmith said that the draft response to the rulemaking petition stated that the issue of cooperation would be included in the next rulemaking review but that no action would take place until 2017 due to the upcoming change in executive leadership.

George Beck then presented his petition to the Board. Mr. Beck said that the current definition of the term "cooperation" in the independent expenditure statute was vague and that defining this term in rule would help candidates and others to avoid violating the statute. Mr. Beck said that the Board could

start with other states' definitions of cooperation and tailor that language to Minnesota. Mr. Beck asked the Board to direct staff to begin a rulemaking on this issue before the end of the year.

Susan Sheridan Tucker, the executive director of the Minnesota League of Women Voters, spoke in support of Mr. Beck's petition.

After discussion, the following motion was made:

Member Leppik's motion: To adopt the draft response to Mr. Beck's petition with the following amendment:

Based on these factors, the Board will not initiate a rulemaking at this time based on your petition. However, it will ask the new executive director to review topics for potential rulemaking ~~in 2017~~, including the topics noted in your petitions, and to bring those topics to the Board for discussion ~~at an appropriate time~~ during calendar year 2016. The Boar then will decide whether to pursue a rulemaking and what topics to include in the rulemaking, if one is undertaken.

Vote on motion: Unanimously passed.

LEGAL COUNSEL'S REPORT

Mr. Hartshorn told members that he had nothing to add to the report that is attached to and made a part of these minutes.

PROCESS FOR SELECTION AND SETTING TERM OF NEW CHAIR

Vice Chair Rosen told members that he was willing to serve as chair through calendar year 2017.

After discussion, the following motion was made:

Member Greenman's motion: To appoint Vice Chair Rosen as the Board chair for the rest of 2016 and all of calendar year 2017.

Vote on motion: Unanimously passed.

Chair Rosen then appointed himself and Member Leppik to the nominating committee to find a new vice chair.

MINUTES (July 5, 2016)

After discussion, the following motion was made:

Member Oliver's motion: To approve the July 5, 2016, minutes as drafted.

Vote on motion: Unanimously passed (Members Greenman and Leppik abstaining).

OTHER BUSINESS

Mr. Goldsmith reviewed the major achievements of his tenure as executive director and told members that it had been a pleasure to serve the Board. Mr. Sigurdson then said that he was honored to have been offered the position of executive director and gladly accepted. Members thanked Mr. Goldsmith for his service and welcomed Mr. Sigurdson to his new position.

There was no other business to report.

EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the Chair reported the following matters into regular session:

Findings, conclusions, and order in the matter of Leon Lillie for House

There being no other business, the meeting was adjourned by the Chair.

Gary Goldsmith
Executive Director

Attachments:
Memorandum regarding process for selection and setting term of new chair
Memorandum regarding Board investigation authority and process
Memorandum regarding Affirmative Action Plan
Affirmative Action Plan
Draft budget
Memorandum regarding noncampaign disbursement guide
Noncampaign disbursement guide
Memorandum regarding rulemaking petition
Draft response to rulemaking petition
Legal report
Findings, conclusions, and order in the matter of Leon Lillie for House

Minnesota

Campaign Finance and Public Disclosure Board

Date: July 26, 2016

To: Board members

From: Gary Goldsmith, Executive Director **Telephone:** 651-539-1190

Re: Selection of new chair and setting of term.

Due to Christian Sande's resignation, it will be necessary for the Board to select a new chair and to establish the term for the new chair.

Typically the chair serves for a calendar year. As the end of the year approaches, a panel of two Board members is named to nominate a new chair and vice chair. In the past, the panel has consisted of the outgoing chair and one other Board member.

In virtually every instance, the vice chair has been nominated to serve as the new chair and another Board member with some seniority has been nominated to serve as new vice chair.

At this point, the Board has two options. It may appoint two members to nominate a new chair, to be elected at the September meeting, or it may nominate Vice Chair Rosen to serve as the new chair and vote immediately. In the latter case, Chair Rosen would then likely appoint himself and one other member to nominate a new vice chair for election at the September meeting.

In the event that the Board elects Mr. Rosen as the new chair, the Board will also need to decide whether the term is to run through the end of the current calendar year or through the end of 2017.

If the Board wishes to elect Mr. Rosen as its new chair at the August meeting, a member would make a motion to appoint Mr. Rosen as chair. The motion should specify the duration of the appointment. Members would then vote on the matter.

Minnesota

Campaign Finance and Public Disclosure Board

Date: July 26, 2016

To: Board members

From: Gary Goldsmith, Executive Director **Telephone:** 651-539-1190

Re: Board investigations

Introduction
The purpose of this memorandum is to provide staff analysis on the subject of the initiation of Board investigations. The main topics are: (1) authority and mandates for Board investigations, (2) criteria for initiating an investigation, and (3) managing investigation timelines and statutory deadlines.

This analysis is based on current law, but will refer to prior law or legislative history where such references are helpful in understanding current law. This analysis is being reviewed by the Office of the Attorney General, which will present it's conclusions either at the August meeting or at the next subsequent meeting.

1. General authority and mandate for conducting investigations

Section 10A.022, subdivision 3
Consideration of the Board's investigative authority is best informed by starting with an examination of the statutes prior to the 2014 Senate amendments. Prior to 2014, section 10A.02, subdivision 11, provided authority for Board investigations through two separate clauses; one permissive and one mandatory:

> The board *may* investigate any alleged violation of this chapter. The board may also investigate an alleged violation of section 211B.04, 211B.12, or 211B.15 by or related to a candidate, treasurer, principal campaign committee, political committee, political fund, or party unit, as those terms are defined in this chapter.
>
> The board *must* investigate any violation that is alleged in a written complaint filed with the board and must within 30 days after the filing of the complaint make findings and conclusions as to whether a violation has occurred and must issue an order, except that if the complaint alleges a violation of section 10A.25 or 10A.27, the board must either enter a conciliation agreement or make public findings and conclusions as to whether a violation has occurred and must issue an order within 60 days after the filing of the complaint. The deadline for action on a written complaint may be extended by majority vote of the board. (Emphasis added.)

The second of these clauses required the Board to investigate every written complaint filed with it, and to do so within a specified time period, which could be extended by Board vote.[1]

The rules of statutory interpretation require an agency to give meaning to every provision of a statute. The second of the above clauses clearly dealt with investigations of complaints and, in general, required an investigation in every case. However, both clauses use the phrase "alleged" violations. Recognizing that the only way the Board is presented with formal "allegations" is through the complaint process, it follows that the first clause must permit investigations based on something other than the type of allegations found in a complaint. If both clauses require third-party allegations, they would conflict with each other with the former making investigation of the allegations discretionary and the latter making it mandatory.

Historically the permissive clause has been read broadly to mean that the Board may investigate any potential violation. Over the Board's 40 year history, that interpretation has not been questioned.

Board-initiated investigations originate with the Executive Director formally presenting a potential violation to the Board. Both before and after the 2014 amendments and rules, the Executive Director was required to lay out the facts and circumstances that suggested that a violation may have occurred. In presenting a matter to the Board, the Executive Director is asserting that the facts and circumstances surrounding a particular matter suggest that a violation *may have* occurred and is asking the Board to consider whether to initiate an investigation to determine whether a violation did or did not actually occur. At this point in the process, the Executive Director is not claiming that a violation *has*, in fact, occurred. Nevertheless, the Executive Director's presentation has always been considered sufficient to allow the Board to consider whether to use its discretionary investigation authority. That is, the submission is sufficient to invoke the Board's process for deciding whether to investigate; though it has not always been sufficient to convince the Board to exercise that discretion.

The conclusion that the legislature intended a broad interpretation of "may investigate any alleged violation" is further supported by legislative action taken in the form of Senate amendments to the statute in 2014.

As a result of the pre-2014 mandatory complaint investigation requirement, it was difficult for the Board to avoid investigations in most cases. Some observers believed that this mandatory complaint investigation requirement resulted in an opportunity for third parties to force Board investigations for political gain.

In the 2014 amendments, the Senate left the discretionary investigation authority clause of 10A.02, subdivision 11, in place without change. However, the Senate amendments repealed the second clause; the clause providing investigative authority for complaints; and substituted a specific process involving a prima facie determination and a probable cause determination prior to undertaking the investigation of a complaint. In 2015 these successor provisions were re-codified as section 10A,022, subdivision 3.[2]

---

[1] To further the implementation of the mandatory investigation clause, the Board had promulgated administrative rules that allowed the Board to reject "frivolous" complaints. Frivolous complaints included complaints not based on Chapter 10A, complaints that did not state a violation and complaints based on no evidence other than a failure to "pass the smell test."

[2] These amendments originated as a Senate initiative, not as a result of a Board recommendation. They passed in 2014 as part of Section 10A.02. In a rearrangement of 10A.02 in 2015, they were moved without change to Section 10A.022.

Furthermore, in the 2014 amendments, the Senate mandated that the Board promulgate administrative rules that, among other things, set forth "the process for the board initiating and overseeing an investigation." Since the statutes themselves set forth in detail the process for initiating the investigation of a complaint, it is a logical conclusion that the rule requirement related to the process for board-initiated investigations not based on complaints. In fact, that is the approach the Board took in its rulemaking and the rules were adopted after passing the required reviews by the Office of Administrative Hearings and the Governor. The rules have been in place through two legislative sessions and the legislature has taken no action to address or modify them through the legislative process.

Part 4525.0340 provides the procedure for initiating a Board investigation. The rule requires that the Executive Director submit to the Board matters under staff review that are not resolved by conciliation agreement and "any other matter that the board is to consider for the authorization of a formal investigation, other than a matter arising from a filed complaint." The complaint process is excluded from this rule because it is controlled largely by statute and clarified by other administrative rules. In general, the rule codified and formalized the pre-rule process that had long been used for initiating Board investigations.[3]

Part 4525.0340 requires the Executive Director to submit the matter in writing and to "describe the potential violation involved." The Board may order an informal investigation (staff review), dismiss the matter, order a formal investigation, or issue findings, conclusions, and an order.

Taken as a whole, section 10A.022, subdivision 3, the mandate to adopt rules establishing the process for initiating a Board investigation, and the rules themselves, clearly establish the legislature's intent that the Board retain broad authority to initiate investigations on its own motion.

Section 10A.022, subdivision 2

While section 10A.022, subdivision 3, establishes the authority for Board-initiated investigations, subdivision 2 of that same section requires the Board to exercise its discretionary authority to conduct investigations and audits as resources are available, providing as follows:

> Within limits of available resources, the board must make audits and investigations with respect to the requirements of this chapter.

Read together, the two clauses give the Board the authority to investigate and require the Board to exercise that authority to the extent that resources are available.

Even if one successfully argued that somehow section 10A.022, subdivision 3, does not give the Board broad investigative authority, subdivision 2, quoted above, clearly does. Part 4525.0150, subpart 5, which specifically recognizes this secondary source of investigative authority preserves the Board's broad authority, stating:

> **Authority reserved to board.** The provisions of this chapter do not affect the board's authority under Minnesota Statutes, section 10A.02, subdivision 10, to order an investigation or audit in any matter.[4]

---

[3] It also provides stronger safeguards for persons who may be subject to the investigation, including formal notice and a right to be heard before the Board decides to initiate an investigation.

[4] At the time the rules were adopted, section 10A.022, subdivision 2, was codified as 10A.2, subdivision 10. In a rearrangement of provisions in 2015, it was moved, but not changed.

Executive Director initiated investigations
Section 10A.022, subdivision 1, and the rules adopted to implement it provide for informal investigations routinely initiated by the Executive Director.

Section 10A.022, subdivision 1, provides:

> The executive director must inspect all material filed with the board as promptly as necessary to comply with this chapter, with other provisions of law requiring the filing of a document with the board, and with other provisions of law under the board's jurisdiction pursuant to subdivision 3. The executive director must immediately notify an individual if a written complaint is filed with the board alleging, or it otherwise appears, that a document filed with the board is inaccurate or does not comply with this chapter, or that the individual has failed to file a document required by this chapter or has failed to comply with this chapter or other provisions under the board's jurisdiction pursuant to subdivision 3.

While the first sentence is somewhat inartfully drafted[5], the purpose of the provision is made clear by the second sentence. Taken in context, the first sentence requires the Executive Director to examine filed documents as quickly as practical to ensure compliance by filers with Chapter 10A and other provisions under the Board's jurisdiction.

The second sentence mandates that the Executive Director notify filers of failures to file, of problems with filed documents, and if apparent violations are disclosed by the filed documents. This provision does not limit the Executive Director to initiating reviews solely based on filed documents. Any potential investigation based on information other than filed documents is brought to the Board for decision. Consistent with this approach, the 2014 administrative rules mandate that the Executive Director commence an investigation if documents filed with the Board suggest that there has been a violation.

Executive Director-initiated investigations have been routinely undertaken since at least the late 1990's. At about that time, the Board started conducting computer analysis of campaign finance reports to identify common violations such as exceeding various limits or accepting contributions during the legislative session. This analysis, which supplements staff review of filings, continues to the present.

Prior to the 2014 amendments, when computer or staff analysis identified a potential violation, the Executive Director contacted the filer to inquire as to whether the subject transaction was reported accurately. If it was, a Board investigation was launched. Typically the investigation concluded with an acknowledgment of the violation by the filer in a conciliation agreement.

With the advent of the 2014 amendments and administrative rules, little has changed with respect to Executive Director-initiated investigations. The successor statute is still the basis for Executive Director-initiated investigations. However, Minnesota Rules, part 4525.0320, now codifies the procedure, which is called a "staff review" and is defined in the rules as an informal form of Board investigation.

---

[5] The sentence says that the Executive Director must examine filings "as promptly as necessary to comply with this chapter." Actually, there is no provision in Chapter 10A that specifies how promptly the Executive Director must examine filings. Read in context, the requirement has been understood to mean that the Executive Director must examine filings as promptly as necessary "to ensure compliance" with this chapter rather than "to comply with" the chapter.

Staff reviews, which were previously implemented through historical use and practice, are now governed by part 4525.0320. The relevant part of the rule provides:

> Subp. 2. **Staff review required.** The executive director must initiate a staff review into a matter when directed to do so by the board.
>
> Unless otherwise directed by the Board, the executive director must also initiate a staff review when a preliminary inquiry into the information provided on a report filed with the board suggests that there has been a violation of chapters 4501 to 4525, Minnesota Statutes, chapter 10A, or another law placed under the board's jurisdiction pursuant to Minnesota Statutes, section 10A.022, subdivision 3.

The "preliminary inquiry" noted in the rule is the same as the preliminary inquiry that was undertaken prior to adoption of the rule. The staff review and its initiation by the Executive Director are the same as the Board investigation initiated by the Executive Director prior to the adoption of the rules.

The main point of this discussion is to make it clear that both prior to and after adoption of the 2014 amendments and supporting rules, the Board has routinely initiated investigations through its Executive Director when documents filed with the Board suggest a violation. Historically, as now, these investigations have been informal without resort to legal process, which could include subpoenas and sworn testimony.

10A.022, subdivision 3, should not be read so narrowly as to preclude Board-initiated investigations in the absence of third-party allegations

The rules of statutory construction require an agency to assume that "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable." Minn. Stat. § 645.17(1). If section 10A.022, subdivision 3, which provides that the Board “may investigate any alleged violation” is read so narrowly as to mean the Board may *only* investigate a violation that is alleged by a third party, then the subdivision 2 mandate to investigate as resources permit cannot be fulfilled unless there are “allegations” of violations. Similarly, the formally adopted rules that require the Executive Director to investigate potential violations disclosed on filed documents would have no basis in statute and could not be sustained.

The Board is an administrative agency charged with the administration of Chapter 10A and limited provisions of Chapter 211B. To be effective, the Board must have broad authority to investigate. To achieve its mandate, the Board, since its inception, has interpreted and applied its investigative authority broadly. The 2014 legislature clearly understood and accepted that interpretation when it left intact the statutory provision giving the Board discretionary investigative authority and requiring the Board to adopt rules formalizing its procedures for initiating those investigations.

An absurd result would be reached if the only violations that the Board is permitted to investigate are those raised by the allegations of a complaint or by some other undefined form of third-party allegation.

2. Initiating a Board investigation not based on a complaint

Current statutes and rules provide considerable guidance for the initiation of an investigation not based on a complaint. The process is formal and provides specific safeguards to protect potential subjects of the investigation. The administrative rules distinguish between an informal

investigation, called a “staff review,” and a formal investigation. Staff reviews were discussed in detail in the preceding section.

Matters other than Executive Director-initiated staff reviews are submitted to the Board for consideration of formal investigations. When a staff review cannot be resolved by the Executive Director or when the Executive Director wants the Board to consider any matter for investigation, the Executive Director presents the matter to the Board under part 4525.0340.

The rule provides for a formal process:

> The submission must be in writing, must describe the potential violation involved, and must include any supporting information. The submission must explain the actions undertaken in any summary proceedings and any points of disagreement preventing resolution of the matter.
>
> The respondent must be given an opportunity to be heard by the board prior to the board’s decision regarding the submission.
>
> The executive director must send notice of the submission to the respondent. The notice must be sent not later than the time that the submission is provided to the board and must include a copy of the submission. The notice must include the date of the meeting at which the board will consider the matter, and a statement that the respondent has the opportunity to be heard by the board before the board’s determination regarding the submission.

Minn. R.4525.0340, subpt 1.

Other rules define the “opportunity to be heard,” which includes the right to appear personally before the Board, to submit written materials, or both. Though not specifically provided in rule or statute, the Board has always permitted persons who are or may be subject to investigations to be represented by counsel.

Although the Executive Director’s submission to the Board is for consideration of a formal investigation, the rule gives the Board the discretion to take alternative actions, including dismissing the matter or ordering an informal staff review.

Part 4525.0340 also provides guidance as to what should be considered when the Board decides how to act on the Executive Director’s submission of a matter:

> In making its determination [of whether to initiate an investigation based on an Executive Director submission], the board must consider the type of possible violation; the magnitude of the violation if it is a financial violation; the extent of knowledge or intent of the violator; the benefit of formal findings, conclusions, and orders compared to informal resolution of the matter; the availability of board resources; whether the violation has been remedied; and any other similar factor necessary to decide whether the matter under review warrants a formal investigation.

As with all other decisions of the Board, a motion to initiate an investigation passes only if it receives at least four votes.

Making the decision to initiate an investigation

The statutes do not make the requirements for prima facie and probable cause determinations applicable to Board-initiated investigations. Nevertheless, the Board has incorporated into its rules various procedural safeguards, including the requirement for a hearing that provides a meaningful right to be heard prior to a Board decision to authorize an investigation.

The legislature has also provided through statute a politically balanced Board and the safeguard of the requirement of four votes to take any action.

The process of a Board-initiated investigation begins with the Executive Director's recognition of facts and circumstances that suggest a potential violation has occurred. Prior to presentation of the matter to the Board, the Executive Director must provide written notice to the persons who may have violated the statute. These respondents have the right to appear at the meeting where the matter will be submitted and to present both written and verbal responses before the Board makes its decision as to whether or not to investigate.

After the hearing, the Board may consider information presented by the Executive Director, by the respondent to the submission, its own experience and expertise in the subject area, and the factors listed in part 4525.0340, subpart 2, set forth above.

A Board decision to initiate an investigation must be based on some level of evidence. Mere whim or suspicion should not be considered sufficient. Put another way, concluding that a situation does not “pass the smell test” should not be grounds for initiating an investigation; something more should be required. However, since the facts are not yet known, exactly what should be required before an investigation is initiated may be something that can only be determined by each Board member in each specific case. In deciding to investigate, the Board should conclude that the matter before it presents a real possibility that upon investigation, a violation will be found.

3. Statutory time restraints on the investigative process

Few matters under Board consideration have statutory timelines. Those that do will be examined here.

The prima facie determination

Minnesota Statutes, section 10A.022, subdivision 3, requires the Chair or other assigned Board member to “promptly" make the prima facie determination. “Promptly” is defined in administrative rule as being within 10 business days.

The statute further provides that if the Chair determines that the complaint does not state a prima facie violation, the complaint must be dismissed. If the Chair determines that the complaint does state a prima facie violation, the matter moves to the probable cause determination stage.

The statute requires a determination by the Chair one way or another. For complaints received since the requirement went into place, staff and the Chair have not had a problem meeting the 10 business day deadline. Because the statute requires a finding of no prima facie violation to dismiss a complaint, the absence – or lateness – of a determination by the Chair would not have the effect of dismissing the complaint, though it would put the Board and the Chair in violation of the requirement to make the determination promptly. The statute does not provide a remedy for such a violation.[6]

[6] Common or statutory law likely provides a remedy for the complainant in the form of injunctive relief, however analysis of that subject is beyond the scope of this memorandum.

Because the statute does not provide for an extension of the ten-day requirement, no Board action is available to affect this deadline.

The probable cause determination

If a prima facie determination is made, the full Board must make a probable cause determination within 45 days thereafter. Section 10A.022, subdivision 3, provides that if the Board makes a probable cause determination, an investigation must be undertaken. The statute is silent on what happens if a finding of no probable cause is made. However, the rules pick up where the statute leaves off. The rules permit various Board actions if the Board finds probable cause. They provide for dismissal of the complaint if the Board finds no probable cause.

As in the case of the prima facie determination, neither the statutes nor rules provide a remedy if the Board does not make the probable cause determination within the specified timeframe. If the issue is simply one of not meeting the deadline, it is staff's opinion that there would be a technical violation, but that the result of a probable cause determination, eventually made, would not be in question. Because the statutes do not provide for an extension of this deadline, no Board action is available to affect this deadline.

It is also necessary to consider the case where the Board is unable to reach the four-vote consensus required to make a determination that probable cause does or does not exist. In that case it is clear that an investigation could not be undertaken because it takes four votes to find probable cause and, thus, trigger an investigation. On the other hand, there would not be four votes for a finding of no probable cause either, so technically, the requirement in the administrative rule to dismiss the matter would not be applicable. Nevertheless, the matter could not proceed. In such a case it would be staff's recommendation to make findings that the Board cannot reach a conclusion as to probable cause and to issue an order dismissing the matter.[7] This would have the effect of making the record public.

Time limits for the completion of investigations

The 2014 amendments removed the general requirement that investigations of complaints must be completed within 30 days unless that deadline is extended by the Board. Additionally, there has never been a statutory timeframe within which Board or Executive Director-initiated investigations must be completed. For this reason, there is no statutory basis and no requirement for a motion with respect to the timeline for these investigations. Staff recently recognized this effect of the 2014 deadline repeal and plans to continue the practice of advising the Board as to the status of investigations at each meeting, but not requiring motions with respect to their timing, except as discussed in the following paragraph.

In the 2014 amendments, the legislature did not repeal the provision that complaints arising from contribution and spending limits violations must be resolved by conciliation agreements and be completed within 60 days after a finding of probable cause. Because this type of matter is generally straightforward, these investigations are, in fact, often completed within the 60-day base period. However, if the investigation cannot be completed within the time provided, it has been the practice of the Board to continue the matter to the next Board meeting. In explaining the Board's rules of order in a separate document, the Executive Director explained that the motion to lay over is really a motion to extend the time to investigate. Since the only investigations that are statutorily time-limited are those resulting from complaints of contribution

[7] Dismissals are without prejudice. However, a complainant would not be entitled to file substantially the same complaint again (which could result in "board-shopping"). For reconsideration there would have to be a significant change to the complaint.

and spending limits violations, the motion to extend the deadline should be reserved for these matters.

Even with these matters, if the deadline is neither met nor extended, there is nothing in statute or rule to suggest that the Board's investigation is somehow suspended or terminated. As with the other deadlines, it is staff's opinion that missing a deadline would put the Board in violation of statute, but would not affect the legitimacy of the ultimate findings, conclusions, and order.

Conclusion

The Board's broad authority to initiate investigations on its own motion is well-established in statute and has been historically exercised without challenge for more than 40 years. However, that authority is bounded by rules which set up the process for initiating investigations and by principles of fundamental fairness, which must be applied in all administrative proceedings.

The principles of fundamental fairness are met by requiring a meaningful hearing both before an investigation is initiated and before any findings, conclusions, and order are issued. Additionally, the Board recognizes that in making decisions to investigate it must rely on more than mere suspicion before proceeding.

Although statutes provide three instances where the Board must complete a step in the investigation process within a specified time, no statute precludes the Board from proceeding with an investigation even in the face of its inability to meet a deadline. While the Board may in that instance be in violation of the statutory time requirement, there is no basis on which to conclude that such a violation ends the investigative process.

On the other hand, an affirmative vote of at least four members is required for any matter that requires a formal Board decision. The inability of the Board to reach a consensus of at least four members could result in a matter being closed with findings and an order explaining that the Board was unable to decide the matter.

Minnesota

Campaign Finance and Public Disclosure Board

Date: July 26, 2016

To: Board Members

From: Gary Goldsmith, Executive Director **Telephone:** 651-539-1190

Re: Affirmative Action Plan

Every two years, the Board must review and ratify its affirmative action plan. The current plan expires on July 31, 2016.

The attached affirmative action plan is based on the state's model plan for agencies with 25 or fewer employees. It will be effective from August 1, 2016, through July 31, 2018. As required, the plan is signed by the Board's executive director. The matter is before the Board for ratification of the plan.

Attachment: Affirmative Action Plan 2016-2018

STATE OF MINNESOTA

Campaign Finance and Public Disclosure Board

Affirmative Action Plan

August 2016 – August 2018

190 Centennial Office Building

658 Cedar Street

St. Paul, MN 55155

This document can be made available upon request in alternative formats by contacting the Board at cf.board@state.mn.us or (651) 539-1180.

Table of Contents

I. STATEMENT OF COMMITMENT 3
II. INDIVIDUALS RESPONSIBLE FOR DIRECTING/IMPLEMENTING THE AFFIRMATIVE ACTION PLAN 4
A. Executive Director 4
B. Affirmative Action Officer/Americans with Disabilities Coordinator 4
C. All Employees 4
III. CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD POLICY PROHIBITING DISCRIMINATION AND HARASSEMENT 4
A. PROHIBITION OF SEXUAL HARASSMENT 5
B. EMPLOYEE AND THIRD PARTY RESPONSIBILITIES AND COMPLAINT PROCEDURE 6
C. SUPERVISOR RESPONSIBILITY 6
D. HUMAN RESOURCES RESPONSIBILITIES 7
E. AFFIRMATIVE ACTION OFFICER OR DESIGNEE RESPONSIBILITIES 7
F. INVESTIGATION AND DISCIPLINE 7
G. NON-RETALIATION 7
IV. COMPLAINT PROCEDURE FOR PROCESSING COMPLAINTS FOR ALLEGED DISCRIMINATION/HARASSMENT8
A. Responsibility of Employees: 8
B. Who May File: 8
C. Complaint Procedure: 8
D. Filing Procedures: 8
V. REASONABLE ACCOMMODATION POLICY 10
VI. WEATHER EMERGENCIES 10
VII. BUILDING EVACUATION 11
VIII. APPENDIX 12
A. Complaint of Discrimination/Harassment Form 12
B. HR/LR Policy #1433 ADA Reasonable Accommodation 14
C. Employee/Applicant Request for ADA Reasonable Accommodation Form 25

I. STATEMENT OF COMMITMENT

This statement reaffirms that the Campaign Finance and Public Disclosure Board is committed to Minnesota's statewide affirmative action efforts and providing equal employment opportunity to all employees and applicants in accordance with equal opportunity and affirmative action laws.

I affirm my personal and official support of these policies which provide that:

- No individual shall be discriminated against in the terms and conditions of employment, personnel practices, or access to and participation in programs, services, and activities with regard to race, sex, color, creed, religion, age, national origin, sexual orientation, disability, marital status, status with regard to public assistance, or membership or activity in a local human rights commission.

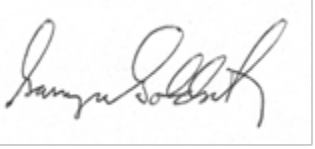
- This Board is committed to the implementation of the affirmative action policies, programs, and procedures included in this plan to ensure that employment practices are free from discrimination. Employment practices include, but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, disciplinary action, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. We will provide reasonable accommodation to employees and applicants with disabilities.

- This Board will continue to actively promote a program of affirmative action, wherever minorities, women, and individuals with disabilities are underrepresented in the workforce, and work to retain all qualified, talented employees, including protected group employees.

- This Board will evaluate its efforts, including those of its directors, managers, and supervisors, in promoting equal opportunity and achieving affirmative action objectives contained herein. In addition, this agency will expect all employees to perform their job duties in a manner that promotes equal opportunity for all.

It is the Board's policy to provide an employment environment free of any form of discriminatory harassment as prohibited by federal, state, and local human rights laws. I strongly encourage suggestions as to how we may improve. We strive to provide equal employment opportunities and the best possible service to all Minnesotans.

July 18, 2016



Gary Goldsmith
Executive Director

II. INDIVIDUALS RESPONSIBLE FOR DIRECTING/IMPLEMENTING THE AFFIRMATIVE ACTION PLAN

A. Executive Director

Gary Goldsmith

The executive director is responsible for oversight of the policies contained in this Affirmative Action Plan and complying with all federal and state equal opportunity laws and regulations.

Accountability:
The executive director is accountable directly to Governor and indirectly to the Minnesota Management and Budget Commissioner on matters pertaining to equal opportunity and affirmative action.

B. Affirmative Action Officer/Americans with Disabilities Coordinator

Jodi Pope, Legal/Management Analyst

Responsibilities:
The Affirmative Action Officer is responsible for implementation of the policies contained in the Board's affirmative action plan, and oversight of the Board's compliance with equal opportunity and affirmative action laws.

The Americans with Disabilities Act Coordinator is responsible for the oversight of the Board's compliance with the Americans with Disabilities Act Title I – Employment and Title II – Public Services, in accordance with the Americans with Disabilities Act - as amended, the Minnesota Human Rights Act, and Executive Order 96-09.

C. All Employees

Responsibilities:
All employees are responsible for conducting themselves in accordance with the Board's equal opportunity and Affirmative Action Plan and policies.

III. CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD POLICY PROHIBITING DISCRIMINATION AND HARASSEMENT

Sexual harassment in any form is strictly prohibited. Individuals who believe they have been subject to sexual harassment are encouraged to file a complaint with an appropriate authority. Any form of retaliation directed against an individual who complains about sexual harassment or who participates in any investigation concerning sexual harassment is strictly prohibited and will not be tolerated. Violations of this policy by State

employees will be subject to discipline, up to and including discharge. Violations of this policy by third parties will be subject to appropriate action.

This policy applies to all employees of, and third parties who have business interactions with, executive branch agencies and the Office of the Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement System, and Teachers' Retirement System.

Definitions
Complainant: An individual who complains about sexual harassment or retaliation.

Public service environment: A location that is not the workplace where public service is being provided.

Sexual harassment: Unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal, written, or physical conduct or communication of a sexual nature.

Third party: Individuals who are not State employees but who have business interactions with State employees, including, but not limited to:

- Applicants for State employment
- Vendors
- Contractors
- Volunteers
- Customers
- Business partners

A. PROHIBITION OF SEXUAL HARASSMENT

Sexual harassment of any employee or third party in the workplace or public service environment, or which affects the workplace or public service environment, is strictly prohibited.

Sexual harassment under this policy is any conduct or communication of a sexual nature which is unwelcome. The victim, as well as the harasser, can be of any gender. The victim does not have to be of the opposite sex as the harasser. Sexual harassment includes, but is not limited to:

1. Unwelcome sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, degrading sexual remarks, threats;
2. Unwelcome sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures;
3. Unwelcome physical contact, such as rape, sexual assault, molestation, or attempts to commit these assaults; unwelcome touching, pinching, or brushing of or by the body;
4. Preferential treatment or promises of preferential treatment for submitting to sexual conduct, including soliciting or attempting to solicit an individual to submit to sexual activity for compensation or reward;
5. Negative treatment or threats of negative treatment for refusing to submit to sexual conduct.
6. Subjecting, or threatening to subject, an individual to unwelcome sexual attention or conduct.

B. EMPLOYEE AND THIRD PARTY RESPONSIBILITIES AND COMPLAINT PROCEDURE

Sexual harassment will not be tolerated. All employees and third parties are expected to comply with this policy.

Employees and third parties are encouraged to report all incidents of sexual harassment. Individuals are encouraged to report incidents of sexual harassment as soon as possible after the incident occurs. Individuals may make a complaint of sexual harassment with:

1. A Board supervisor;
2. The Board's affirmative action officer;
3. The Board's human resource office (SmART);
4. Board management, up to and including the executive director.

If the complaint concerns an agency head, the complainant may contact Minnesota Management & Budget, Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion.

To ensure the prompt and thorough investigation of a complaint of sexual harassment, the complainant may be asked to provide information in writing, which may include, but is not limited to:

1. The name, department, and position of the person(s) allegedly causing the harassment;
2. A description of the incident(s), including the date(s), location(s), and the presence of any witnesses;
3. The name(s) of other individuals who may have been subject to similar harassment;
4. What, if any, steps have been taken to stop the harassment;
5. Any other information the complainant believes to be relevant.

Individuals are encouraged to use the Board's internal complaint procedure, but may also choose to file a complaint externally with the Equal Employment Opportunity Commission (EEOC) and/or the Minnesota Department of Human Rights or other legal channels.

C. SUPERVISOR RESPONSIBILITY

Supervisors are responsible for the following:

1. Modeling appropriate behavior;
2. Treating all complaints of sexual harassment seriously, regardless of the individuals or behaviors involved;
3. When a complaint of sexual harassment has been made to the supervisor, or when the supervisor is otherwise aware that a problem exists, the supervisor must appropriately respond to the complaint or problem;
4. Immediately report all allegations or incidents of sexual harassment to human resources or the Board Affirmative Action Officer so that prompt and appropriate action can be taken;
5. Complying with the Board's complaint and investigation procedures and/or Affirmative Action Plan to ensure prompt and appropriate action in response to complaints of sexual harassment.

Supervisors who knowingly participate in, allow, or tolerate sexual harassment or retaliation are in violation of this policy and are subject to discipline, up to and including discharge.

D. HUMAN RESOURCES RESPONSIBILITIES

Agency human resources offices are responsible for the following:

1. Modeling appropriate behavior;
2. Distributing the sexual harassment policy to all employees, through a method whereby receipt can be verified;
3. Treating all complaints of sexual harassment seriously, regardless of the individual(s) or behaviors involved;
4. Complying with the agency's complaint and investigation procedures and/or their Affirmative Action Plan to ensure prompt and appropriate action in response to complaints of sexual harassment.

E. AFFIRMATIVE ACTION OFFICER OR DESIGNEE RESPONSIBILITIES

Agency Affirmative Action Officer/designee is responsible for the following:

1. Modeling appropriate behavior;
2. Treating all complaints of sexual harassment seriously, regardless of the individual(s) or behaviors involved;
3. Complying with the Board's complaint and investigation procedures to ensure the prompt and appropriate action in response to complaints of sexual harassment;
4. Keeping the Board apprised of changes and developments in the law.

F. INVESTIGATION AND DISCIPLINE

All complaints of sexual harassment will be taken seriously, and prompt and appropriate action taken. When conducting an investigation, supervisors, human resources, and Affirmative Action Officers must follow their agency's investigation procedures. The agency's investigation procedures are described in section IV.

Timely and appropriate corrective action will be taken when there is a violation of this policy. Employees who are found to have engaged in sexual harassment in violation of this policy will be subject to disciplinary action, up to and including discharge.

Third parties who are found to have engaged in sexual harassment in violation of this policy will be subject to appropriate action. Appropriate action for policy violations by third parties will depend on the facts and circumstances, including the relationship between the third party and the agency. Agencies may contact MMB Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion for assistance in determining appropriate action for third parties. MMB may refer agencies to the appropriate resources, which may include, for example, the Department of Administration with respect to policy violations by vendors or contractors.

Employees who knowingly file a false complaint of sexual harassment will be subject to disciplinary action, up to and including discharge.

G. NON-RETALIATION

Retaliation against any person who reports sexual harassment or participates in an investigation of such reports is strictly prohibited. Retaliation will not be tolerated. Any employee who is found to have engaged in retaliation

in violation of this policy will be subject to discipline, up to and including discharge. Third parties who are found to have engaged in retaliation in violation of this policy will be subject to appropriate action.

IV. COMPLAINT PROCEDURE FOR PROCESSING COMPLAINTS FOR ALLEGED DISCRIMINATION/HARASSMENT

The Board has established the following discrimination/harassment complaint procedure to be used by all employees and applicants. Coercion, reprisal, or intimidation against anyone filing a complaint or serving as a witness under this procedure is prohibited.

A. Responsibility of Employees:

All employees shall respond promptly to any and all requests by the Affirmative Action Officer or designee for information and for access to data and records for the purpose of enabling the Affirmative Action Officer or designee to carry out responsibilities under this complaint procedure. The failure of any employee to comply with the requests of the Affirmative Action Officer or designee shall be reported to the executive director.

B. Who May File:

Any employee or applicant who believes that he or she has been discriminated against or harassed by reason of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age may file a complaint. Employees who are terminated are encouraged to file their internal complaint prior to their actual separation; however, complaints will be taken for a reasonable period of time subsequent to the actual separation date.

C. Complaint Procedure:

The internal complaint procedure provides a method for resolving complaints involving violations of this Board's policy prohibiting discrimination and harassment within the agency. Employees and applicants are encouraged to use this internal complaint process. If the employee chooses, she/he may file a complaint externally with the Minnesota Department of Human Rights, the Equal Employment Opportunity Commission, or through other legal channels. Retaliation against a person who has filed a complaint either internally or through an outside enforcement agency or other legal channels is prohibited. The Affirmative Action Officer or designee may contact the Office of Diversity and Equal Opportunity if more information is needed about filing a complaint.

D. Filing Procedures:

1. The employee or applicant completes the "Complaint of Discrimination/Harassment Form" provided by the Affirmative Action Officer or designee. Employees are encouraged to file a complaint within a reasonable period of time after the individual becomes aware that a situation may involve discrimination or harassment. The Affirmative Action Officer or designee will, if requested, provide assistance in filling out the form.

2. The Affirmative Action Officer or designee determines if the complaint falls under the purview of Equal Employment Opportunity law, i.e., the complainant is alleging discrimination or harassment on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age; or if the complaint is of a general personnel concern. The Affirmative Action Officer or designee shall also discuss other options for resolution, such as the workplace mediation.
    - If it is determined that the complaint is not related to discrimination but rather to general personnel concerns, the Affirmative Action Officer designee will inform the complainant, in writing, within ten (10) working days.
    - If the complaint is related to discrimination, the Affirmative Action Officer or designee will, within ten (10) working days, contact all parties named as respondents and outline the basic facts of the complaint. The respondents will be asked to provide a response to the allegations within a specific period of time.

3. The Affirmative Action Officer or designee shall then investigate the complaint. At the conclusion of the investigation, the Affirmative Action Officer or designee shall notify the complainants and respondents that the investigation is completed. The Affirmative Action Officer or designee shall than review the findings of the investigation.
    - If there is sufficient evidence to substantiate the complaint, appropriate action will be taken.
    - If insufficient evidence exists to support the complaint, a letter will be sent to the complainants and the respondents dismissing the complaint.

4. A written answer will be provided to the parties within sixty (60) days after the complaint is filed. The complainants will be notified should extenuating circumstances prevent completion of the investigation within sixty (60) days.

5. Disposition of the complaint will be filed with the Commissioner of the Minnesota Management and Budget within thirty (30) days after the final determination.

6. All documentation associated with a complaint shall be considered investigative data under the Minnesota Government Data Practices Act. The status of the complaint will be shared with the complainants and respondents. After an investigation is completed and all appeals are exhausted, all documentation is subject to the provisions of the Minnesota Government Data Practices Act.

7. All data collected may at some point become evidence in civil or criminal legal proceedings pursuant to state or federal statutes. An investigation may include, but is not limited to, the following types of data:
    - Interviews or written interrogatories with all parties involved in the complaint, i.e., complainants, respondents, and their respective witnesses; officials having pertinent records or files, etc.; and
    - All records pertaining to the case i.e., written, recorded, filmed, or in any other form.

8. The Affirmative Action Officer or designee shall maintain records of all complaints and any pertinent information or data for three (3) years after the case is closed.

V. REASONABLE ACCOMMODATION POLICY

The State of Minnesota and the Campaign Finance and Public Disclosure Board are committed to the fair and equal employment of individuals with disabilities. The State of Minnesota has adopted HR/LR Policy #1433 regarding ADA reasonable accommodation. This policy applies to the Board and is incorporated into the Board's Affirmative Action Plan. The policy is included in the Plan's Appendix.

Under HR/LR Policy #1433, agency management is ultimately responsible for ensuring compliance with the ADA and the policy. The policy designates the ADA Coordinator as the person responsible for making decisions on reasonable accommodation requests but allows agencies to delegate decisions on some types of requests to supervisors and managers. The Board has not delegated any decision-making authority under this provision to supervisors or managers because the Board has only nine employees who all are directly supervised by either the executive director or the assistant executive director.

HR/LR Policy #1433 requires agencies to specify how they will pay for reasonable accommodations. Funding for reasonable accommodations will be sought from the State of Minnesota Accommodation Fund. To the extent that funds are not available from the Accommodation Fund, they will be paid from the Board's general operating appropriation.

Employees or applicants who are dissatisfied with the decisions pertaining to an accommodation request may file an appeal with the Executive Director or Board Chair, within a reasonable period of time, for a final decision. If the individual believes the decision is based on discriminatory reasons, she/he may file a complaint internally through the Board's complaint procedure as outlined in this plan.

Supported Work:
Based on the size of the Board staff, there is no opportunity at this time to participate in the Supported Worker Program. Staff will work with the Department of Employee Relations if an opportunity arises in the future to use this program.

VI. WEATHER EMERGENCIES

Notices of weather-related threats are initiated by the national Weather Service (NWS). NWS and local broadcasts are monitored by Capitol Complex Security who in the event of an emergency will inform employees and issue relocation orders. Relocation will take place according to the Emergency Evacuation Plan for the Centennial Office Building.

All present employees who are deaf/hard of hearing will receive notification, by the supervisor or designated backup staff in the case of an emergency.

In the case of winter storms, all employees are asked to monitor local radio and television stations for the closure of state offices.

All employees who are deaf/hard of hearing or speech impaired that use TTY's and are not at work when an emergency is called, will be informed of the emergency by their supervisor through the Minnesota Relay Service (800) 627-3529.

VII. BUILDING EVACUATION

Board staff follows the emergency evacuation plan for the Centennial Office Building created by the Department of Public Safety Capitol Security and Department of Employee Relations, revised June 26, 2014.

Each employee is provided with a copy of the emergency evacuation procedures upon employment. The emergency plan is reviewed with staff, annually, at a staff meeting.

Employees who are mobility or sensory impaired are assigned an assistant to assist them in the evacuation.

VIII. APPENDIX

A. Complaint of Discrimination/Harassment Form

Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar St.
St. Paul, MN 55155-1603
(651) 539-1180

Compliant of Discrimination/Harassment Form
Please Read Before Completion of Form
Any complaint of discrimination/harassment is considered confidential data under Minnesota Statutes section 13.39, subdivision 1 and 2. This information is being collected for the purpose of determining whether discrimination/harassment has occurred. You are not legally required to provide this information, but without it, an investigation cannot be conducted. This information may only be released to the Executive Director, Affirmative Action Officer or designee, the complainant, the respondent, and appropriate personnel.

Complainant (You)		
Name	Job Title	
Work Address	City, State, Zip Code	Telephone
Agency	Division	Manager/Supervisor's Name

Respondent (Individual Who Discriminated Against/Harassed You)		
Name	Job Title	
Work Address	City, State, Zip Code	Telephone
Agency	Division	Manager/Supervisor's Name

The Complaint **Basis of Complaint (Place an "X" in the box for all that apply):**		
☐ Race	☐ Disability	☐ Sexual Orientation
☐ Sex (Gender)	☐ Marital Status	☐ Status with Regard to Public Assistance
☐ Age	☐ National Origin	☐ Membership or Activity in a Local Human Rights Commission
☐ Color	☐ Creed	☐ Religion

Date most recent act of discrimination or harassment took place:

If you filed this complaint with another agency, give the name of that agency:

Describe how you believe that you have been discriminated or harassed against (names, dates, places, etc.). Use a separate sheet of paper if needed and attach to this form.

Information on Witnesses Who Can Support Your Case		
Name	**Work Address**	**Work Telephone**
1.		
2.		
3.		

Additional witnesses may be listed in "Additional Information" or on a separate sheet attached to this form.

This complaint is being filed on my honest believe that the State of Minnesota has discriminated against or harassed me. I hereby certify that the information I have provided in this complaint is true, correct and complete to the best of my knowledge and belief.

Signatures	
Complainant Signature	**Date**
Affirmative Action Officer Signature	**Date**

B. HR/LR Policy #1433 ADA Reasonable Accommodation

HR/LR Policy #1433 ADA Reasonable Accommodation	**Issued**	03/09/1999
	Revised	07/26/2002 10/01/2015 (supersedes *Policy 3.2*)
	Authority	Equal Opportunity, Diversity, and Inclusion

OVERVIEW	
Objective	The goals of this policy are: • To ensure compliance with all applicable state and federal laws; • To establish a written and readily accessible procedure regarding reasonable accommodation, including providing notice of this policy on all job announcements; • To provide guidance and resources about reasonable accommodations; • To provide a respectful interactive process to explore reasonable accommodations; and • To provide a timely and thorough review process for requests for reasonable accommodation.
Policy Statement	State agencies must comply with all state and federal laws that prohibit discrimination against qualified individuals with disabilities in all employment practices. All state agencies must provide reasonable accommodations to qualified applicants and employees with disabilities unless to do so would cause an undue hardship or pose a direct threat. Agencies must provide reasonable accommodation when: • A qualified applicant with a disability needs an accommodation to have an equal opportunity to compete for a job; • A qualified employee with a disability needs an accommodation to perform the essential functions of the employee's job; and • A qualified employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., trainings, office sponsored events).
Scope	This policy applies to all employees of the Executive Branch and classified employees in the Office of Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement System, and Teachers' Retirement System.
Definitions	**Applicant** A person who expresses interest in employment and satisfies the minimum requirements for application established by the job posting and job description. **Americans with Disabilities Act (ADA) Coordinator** Each agency is required to appoint an ADA coordinator or designee, depending on agency size, to direct and coordinate agency compliance with Title I of the ADA.

OVERVIEW	
	Direct Threat A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a direct threat shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. **Essential Functions** Duties so fundamental that the individual cannot do the job without being able to perform them. A function can be essential if: • The job exists specifically to perform the function(s); or • There are a limited number of other employees who could perform the function(s); or • The function(s) is/are specialized and the individual is hired based on the employee's expertise. **Interactive Process** A discussion between the employer and the individual with a disability to determine an effective reasonable accommodation for the individual with a disability. To be interactive, both sides must communicate and exchange information. **Individual with a Disability** An individual who: • Has a physical, sensory, or mental impairment that substantially limits one or more major life activities; or • Has a record or history of such impairment; or • Is regarded as having such impairment. **Qualified Individual with a Disability** An individual who: • Satisfies the requisite skill, experience, education, and other job-related requirements of the job that the individual holds or desires; and • Can perform the essential functions of the position with or without reasonable accommodation. **Major Life Activities** May include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. **Medical Documentation** Information from the requestor's treating provider which is sufficient to enable the employer to determine whether an individual has a disability and whether and what

OVERVIEW	
	type of reasonable accommodation is needed when the disability or the need for accommodation is not obvious. Medical documentation can be requested using the standardized Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider. **Reasonable Accommodation** An adjustment or alteration that enables a qualified individual with a disability to apply for a job, perform job duties, or enjoy the benefits and privileges of employment. Reasonable accommodations may include: • Modifications or adjustments to a job application process to permit a qualified individual with a disability to be considered for a job; or • Modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job; or • Modifications or adjustments that enable qualified employees with disabilities to enjoy equal benefits and privileges of employment. Modifications or adjustments may include, but are not limited to: • Providing materials in alternative formats like large print or Braille; • Providing assistive technology, including information technology and communications equipment, or specially designed furniture; • Modifying work schedules or supervisory methods; • Granting breaks or providing leave; • Altering how or when job duties are performed; • Removing and/or substituting a marginal function; • Moving to a different office space; • Providing telework; • Making changes in workplace policies; • Providing a reader or other staff assistant to enable employees to perform their job functions, where a reasonable accommodation cannot be provided by current staff; • Removing an architectural barrier, including reconfiguring work spaces; • Providing accessible parking; or • Providing a reassignment to a vacant position. **Reassignment** Reassignment to a vacant position for which an employee is qualified is a “last resort” form of a reasonable accommodation. This type of accommodation must be provided to an employee, who, because of a disability, can no longer perform the essential functions of the position, with or without reasonable accommodation, unless the employer can show that it will be an undue hardship. **Support Person** Any person an individual with a disability identifies to help during the reasonable accommodation process in terms of filling out paperwork, attending meetings during the interactive process to take notes or ask clarifying questions, or to provide emotional support. **Undue Hardship** A specific reasonable accommodation would require significant difficulty or expense.

OVERVIEW	
	Undue hardship is always determined on a case-by-case basis considering factors that include the nature and cost of the accommodation requested and the impact of the accommodation on the operations of the agency. A state agency is not required to provide accommodations that would impose an undue hardship on the operation of the agency.
Exclusions	N/A
Statutory References	Rehabilitation Act of 1973, Title 29 USC 701 Americans with Disabilities Act (1990) 29 C.F.R. 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act

GENERAL STANDARDS AND EXPECTATIONS

Individuals who may request a reasonable accommodation include

- Any qualified applicant with a disability who needs assistance with the job application procedure or the interview or selection process; or
- Any qualified agency employee with a disability who needs a reasonable accommodation to perform the essential functions of the position; or
- A third party, such as a family member, friend, health professional or other representative, on behalf of a qualified applicant or employee with a disability, when the applicant or employee is unable to make the request for reasonable accommodation. When possible, the agency must contact the applicant or employee to confirm that the accommodation is wanted. The applicant or employee has the discretion to accept or reject the proposed accommodation.

The agency must abide by the Minnesota Government Data Practices Act, Chapter 13, in obtaining or sharing information related to accommodation requests.

How to request a reasonable accommodation

An agency applicant or employee may make a reasonable accommodation request to any or all of the following:

- Immediate supervisor or manager in the employee's chain of command;
- Agency Affirmative Action Officer/Designee;
- Agency ADA Coordinator;
- Agency Human Resources Office;
- Any agency official with whom the applicant has contact during the application, interview and/or selection process.

Timing of the request

An applicant or employee may request a reasonable accommodation at any time, even if the individual has not previously disclosed the existence of a disability or the need for an accommodation. A request is any communication in which an individual asks or states that he or she needs the agency to provide or change something because of a medical condition.

The reasonable accommodation process begins as soon as possible after the request for accommodation is made.

GENERAL STANDARDS AND EXPECTATIONS

Form of the request

The applicant or employee is responsible for requesting a reasonable accommodation or providing sufficient notice to the agency that an accommodation is needed.

An initial request for accommodation may be made in any manner (e.g., writing, electronically, in person or orally).

The individual requesting an accommodation does not have to use any special words and does not have to mention the ADA or use the phrase "reasonable accommodation" or “disability.”

Oral requests must be documented in writing to ensure efficient processing of requests.

Agency request forms can be found at: “Employee/Applicant Request for Reasonable Accommodation Form”.

When a supervisor or manager observes or receives information indicating that an employee is experiencing difficulty performing the job due to a medical condition or disability, further inquiry may be required. Supervisors or managers should consult with the agency ADA Coordinator for advice on how to proceed.

When an employee needs the same reasonable accommodation on a repeated basis (e.g., the assistance of a sign language interpreter), a written request for accommodation is required the first time only. However, the employee requesting an accommodation must give appropriate advance notice each subsequent time the accommodation is needed. If the accommodation is needed on a regular basis (e.g., a weekly staff meeting), the agency must make appropriate arrangements without requiring a request in advance of each occasion.

The interactive process entails

Communication is a priority and encouraged throughout the entire reasonable accommodation process. The interactive process is a collaborative process between the employee and/or applicant and the agency to explore and identify specific reasonable accommodation(s). (For information on the Interactive Process see the U.S. Department of Labor, Job Accommodation Network at http://askjan.org/topics/interactive.htm). This process is required when:

- The need for a reasonable accommodation is not obvious;
- The specific limitation, problem or barrier is unclear;
- An effective reasonable accommodation is not obvious;
- The parties are considering different forms of reasonable accommodation;
- The medical condition changes or fluctuates; or,
- There are questions about the reasonableness of the requested accommodation.

The interactive process should begin as soon as possible after a request for reasonable accommodation is made or the need for accommodation becomes known.

The process should ensure a full exchange of relevant information and communication between the individual and the agency. An individual may request that the agency ADA Coordinator, a union representative, or support person be present.

The agency ADA Coordinator shall be consulted when:

- Issues, conflicts or questions arise in the interactive process; and
- Prior to denying a request for accommodation.

GENERAL STANDARDS AND EXPECTATIONS

Agency responsibilities for processing the request

As the first step in processing a request for reasonable accommodation, the person who receives the request must promptly forward the request to the appropriate decision maker. At the same time, the recipient will notify the requestor who the decision maker is.

Commissioner
The commissioner of the agency or agency head has the ultimate responsibility to ensure compliance with the ADA and this policy and appoint an ADA Coordinator.

ADA Coordinator
The agency ADA Coordinator is the agency's decision maker for reasonable accommodation requests for all types of requests outside of the supervisors' and managers' authority. The agency ADA Coordinator will work with the supervisor and manager, and where necessary, with agency Human Resources, to implement the approved reasonable accommodation.

Supervisors and Managers
Agencies have the authority to designate the level of management approval needed for reasonable accommodation requests for low-cost purchases. For example:

- Requests for standard office equipment that is needed as a reasonable accommodation and adaptive items costing less than $100. [Agencies can adjust the dollar amount based on their needs]; and
- Requests for a change in a condition of employment such as modified duties, or a change in schedule, or the location and size of an employee's workspace. [Agencies can choose to delegate specific requests to supervisors or managers or require these types of requests to work through the agency ADA Coordinator].

Analysis for processing requests

Before approving or denying a request for accommodation, the agency decision maker with assistance from the agency ADA Coordinator will:

1. Determine if the requestor is a qualified individual with a disability;
2. Determine if the accommodation is needed to:
    - Enable a qualified applicant with a disability to be considered for the position the individual desires;
    - Enable a qualified employee with a disability to perform the essential functions of the position; or
    - Enable a qualified employee with a disability to enjoy equal benefits or privileges of employment as similarly situated employees without disabilities;
3. Determine whether the requested accommodation is reasonable;
4. Determine whether there is a reasonable accommodation that will be effective for the requestor and the agency; and
5. Determine whether the reasonable accommodation will impose an undue hardship on the agency's operations.

An employee's accommodation preference is always seriously considered, but the agency is not obligated to provide the requestor's accommodation of choice, so long as it offers an effective accommodation, or determines that accommodation would cause an undue hardship.

GENERAL STANDARDS AND EXPECTATIONS

Obtaining medical documentation in connection with a request for reasonable accommodation

In some cases, the disability and need for accommodation will be reasonably evident or already known, for example, where an employee is blind. In these cases, the agency will not seek further medical documentation. If a requestor's disability and/or need for reasonable accommodation are not obvious or already known, the agency ADA Coordinator may require medical information showing that the requestor has a covered disability that requires accommodation. The agency ADA Coordinator may request medical information in certain other circumstances. For example when:

- The information submitted by the requestor is insufficient to document the disability or the need for the accommodation;
- A question exists as to whether an individual is able to perform the essential functions of the position, with or without reasonable accommodation; or
- A question exists as to whether the employee will pose a direct threat to himself/herself or others.

Where medical documentation is necessary, the agency ADA Coordinator must make the request and use the Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider. The agency ADA Coordinator must also obtain the requestor's completed and signed Authorization for Release of Medical Information.

Only medical documentation specifically related to the employee's request for accommodation and ability to perform the essential functions of the position will be requested. When medical documentation or information is appropriately requested, an employee must provide it in a timely manner, or the agency may deny the reasonable accommodation request. Agencies must not request medical records; medical records are not appropriate documentation and cannot be accepted. **Supervisors and managers *must not* request medical information or documentation from an applicant or employee seeking an accommodation.** Such a request will be made by the agency ADA Coordinator, if appropriate.

Confidentiality requirements

Medical Information

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. All medical information obtained in connection with such requests must be collected and maintained on separate forms and in separate physical or electronic files from non-medical personnel files and records. Electronic copies of medical information obtained in connection with the reasonable accommodation process must be stored so that access is limited to only the agency ADA Coordinator. Physical copies of such medical information must be stored in a locked cabinet or office when not in use or unattended. Generally, medical documentation obtained in connection with the reasonable accommodation process should only be reviewed by the agency ADA Coordinator.

The agency ADA Coordinator may disclose medical information obtained in connection with the reasonable accommodation process to the following:

- Supervisors, managers or agency HR staff who have a need to know may be told about the necessary work restrictions and about the accommodations necessary to perform the employee's duties. However, information about the employee's medical condition should only be disclosed if strictly necessary, such as for safety reasons;
- First aid and safety personnel may be informed, when appropriate, if the employee may require emergency treatment or assistance in an emergency evacuation;
- To consult with the State ADA Coordinator or Employment Law Counsel at MMB, or the Attorney General's Office about accommodation requests, denial of accommodation requests or purchasing of specific assistive technology or other resources; or

GENERAL STANDARDS AND EXPECTATIONS

- Government officials assigned to investigate agency compliance with the ADA.

Whenever medical information is appropriately disclosed as described above, the recipients of the information must comply with all confidentiality requirements.

Accommodation Information
The fact that an individual is receiving an accommodation because of a disability is confidential and may only be shared with those individuals who have a need to know for purposes of implementing the accommodation, such as the requestor's supervisor and the agency ADA Coordinator.

General Information
General summary information regarding an employee's or applicant's status as an individual with a disability may be collected by agency equal opportunity officials to maintain records and evaluate and report on the agency's performance in hiring, retention, and processing reasonable accommodation requests.

Approval of requests for reasonable accommodation

As soon as the decision maker determines that a reasonable accommodation will be provided, the agency ADA Coordinator will process the request and provide the reasonable accommodation in as short of a timeframe as possible. The time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. If an approved accommodation cannot be provided within a reasonable time, the decision maker will inform the requestor of the status of the request before the end of 30 days. Where feasible, if there is a delay in providing the request, temporary measures will be taken to provide assistance.

Once approved, the reasonable accommodation should be documented for record keeping purposes and the records maintained by the agency ADA Coordinator.

Funding for reasonable accommodations

The agency must specify how the agency will pay for reasonable accommodations.

Procedures for reassignment as a reasonable accommodation

Reassignment to a vacant position is an accommodation that must be considered if there are no effective reasonable accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other reasonable accommodations would impose an undue hardship.

The agency ADA Coordinator will work with agency Human Resources staff and the requestor to identify appropriate vacant positions within the agency for which the employee may be qualified and can perform the essential functions of the vacant position, with or without reasonable accommodation. Vacant positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors will be considered first. If there are none, the agency will consider vacant lower level positions for which the individual is qualified. The EEOC recommends that the agency consider positions that are currently vacant or will be coming open within at least the next 60 days.

Denial of requests for reasonable accommodation

The agency ADA Coordinator must be contacted for assistance and guidance prior to denying any request for

GENERAL STANDARDS AND EXPECTATIONS

reasonable accommodation. The agency may deny a request for reasonable accommodation where:

- The individual is not a qualified individual with a disability;
- The reasonable accommodation results in undue hardship or the individual poses a direct threat to the individual or others. Undue hardship and direct threat are determined on a case-by-case basis with guidance from the agency ADA Coordinator; or
- Where no reasonable accommodation, including reassignment to a vacant position, will enable the employee to perform all the essential functions of the job.

The explanation for denial must be provided to the requestor in writing. The explanation should be written in plain language and clearly state the specific reasons for denial. Where the decision maker has denied a specific requested accommodation, but has offered a different accommodation in its place, the decision letter should explain both the reasons for denying the accommodation requested and the reasons that the accommodation being offered will be effective.

Consideration of undue hardship

An interactive process must occur prior to the agency making a determination of undue hardship. Determination of undue hardship is made on a case-by-case basis and only after consultation with the agency's ADA Coordinator. In determining whether granting a reasonable accommodation will cause an undue hardship, the agency considers factors such as the nature and cost of the accommodation in relationship to the size and resources of the agency and the impact the accommodation will have on the operations of the agency.

Agencies may deny reasonable accommodations based upon an undue hardship. Prior to denying reasonable accommodation requests due to lack of financial resources, the agency will consult with the State ADA Coordinator at MMB.

Determining direct threat

The determination that an individual poses a "direct threat," (i.e., a significant risk of substantial harm to the health or safety of the individual or others) which cannot be eliminated or reduced by a reasonable accommodation, must be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job with or without reasonable accommodation. A determination that an individual poses a direct threat cannot be based on fears, misconceptions, or stereotypes about the individual's disability. Instead, the agency must make a reasonable medical judgment, relying on the most current medical knowledge and the best available objective evidence.

In determining whether an individual poses a direct threat, the factors to be considered include:

- Duration of the risk;
- Nature and severity of the potential harm;
- Likelihood that the potential harm will occur; and
- Imminence of the potential harm.

Appeals process in the event of denial

In addition to providing the requestor with the reasons for denial of a request for reasonable accommodation, agencies must designate a process for review when an applicant or employee chooses to appeal the denial of a reasonable accommodation request. This process:

- Must include review by an agency official;

GENERAL STANDARDS AND EXPECTATIONS
• May include review by the State ADA Coordinator; and/or • Must inform the requestor of the statutory right to file a charge with the Equal Employment Opportunity Commission or the Minnesota Department of Human Rights. ***Information tracking and records retention*** Agencies must track reasonable accommodations requested and report once a year by September 1st to MMB the number and types of accommodations requested, approved, denied and other relevant information. Agencies must retain reasonable accommodation documentation according to the agency's document retention schedule, but in all cases for at least one year from the date the record is made or the personnel action involved is taken, whichever occurs later. 29 C.F.R. § 1602.14.

RESPONSIBILITIES	
Agencies are responsible for:	Adoption and implementation of this policy and development of reasonable accommodation procedures consistent with the guidance in this document.
MMB is responsible for:	Provide advice and assistance to state agencies and maintain this policy.

FORMS AND INSTRUCTIONS	
Please review the following forms: • Employee/Applicant Request for ADA Reasonable Accommodation • Authorization of Release of Medical Information for ADA Reasonable Accommodations • Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider	
Contacts	Equal Opportunity, Diversity, and Inclusion Office, Minnesota Management and Budget.
References	U.S. Equal Employment Opportunity Commission, *Enforcement Guidance* • Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995). • Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996). • The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997). • Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (October 17, 2002), (clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship). • Disability-Related Inquiries and Medical Examinations of Employees (explains when it is permissible for employers to make disability-related inquiries or require medical examinations of employees). • Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 4055:7371. The Genetic Information Nondiscrimination Act (GINA) of 2008 and M.S. 181.974 prohibit employers from using genetic information when making decisions regarding

FORMS AND INSTRUCTIONS	
	employment. Minnesota Human Rights Act (MHRA) prohibits employers from treating people differently in employment because of their race, color, creed, religion, national origin, sex, marital status, familial status, disability, public assistance, age, sexual orientation, or local human rights commission activity. The MHRA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship or where the individual poses a direct threat to the health or safety of the individual or others. The MHRA prohibits requesting or requiring information about an individual's disability prior to a conditional offer of employment. The Family and Medical Leave Act is a federal law requiring covered employers to provide eligible employees twelve weeks of job-protected, unpaid leave for qualified medical and family reasons. Executive Order 14-14, Providing for Increased Participation of Individuals with Disabilities in State Employment, directs agencies to make efforts to hire more individuals with disabilities and report on progress.

C. Employee/Applicant Request for ADA Reasonable Accommodation Form

State of Minnesota – Campaign Finance and Public Disclosure Board Employee/Applicant Request for Americans with Disabilities Act ("ADA") Reasonable Accommodation Form

The State of Minnesota is committed to complying with the Americans with Disabilities Act ("ADA") and the Minnesota Human Rights Act ("MHRA"). To be eligible for an ADA accommodation, you must be 1) qualified to perform the essential functions of your position and 2) have a disability that limits a major life activity or function. The ADA Coordinator/Designee will review each request on an individualized case-by-case basis to determine whether or not an accommodation can be made.

Employee/Applicant Name:	**Job Title:**
Work Location:	**Phone Number:**

Data Privacy Statement: This information may be used by your agency human resources representative, ADA Coordinator or designee, your agency legal counsel, or any other individual who is authorized by your agency to receive medical information for purposes of providing reasonable accommodations under the ADA and MHRA. This information is necessary to determine whether you have a disability as defined by the ADA or MHRA, and to determine whether any reasonable accommodation can be made. The provision of this information is strictly voluntary; however, if you refuse to provide it, your agency may refuse to provide a reasonable accommodation.

A. Questions to clarify accommodation requested.

1. **What specific accommodation are you requesting?**

2. **If you are not sure what accommodation is needed, do you have any suggestions about what options we can explore?**

   YES NO

   a. **If yes, please explain.**

B. **Questions to document the reason for the accommodation request *(please attach additional pages if necessary).***

1. **What, if any, job function are you having difficulty performing?**

Reasonable Accommodation Request Form, Page 2

2. **What, if any, employment benefits are you having difficulty accessing?**

3. **What limitation, as result of your physical or mental impairment, is interfering with your ability to perform your job or access an employment benefit?**

4. **If you are requesting a specific accommodation, how will that accommodation be effective in allowing you to perform the functions of your job?**

Information Pertaining to Medical Documentation: In the context of assessing an accommodation request, medical documentation may be needed to determine if the employee has a disability covered by the ADA and to assist in identifying an effective accommodation. The ADA Coordinator or designee in each agency is tasked with collecting necessary medical documentation. In the event that medical documentation is needed, the employee will be provided with the appropriate forms to submit to their medical provider. The employee has the responsibility to ensure that the medical provider follows through on requests for medical information.

This authorization does not cover, and the information to be disclosed should not contain, genetic information. "Genetic Information" includes: Information about an individual's genetic tests; information about genetic tests of an individual's family members; information about the manifestation of a disease or disorder in an individual's family members (family medical history); an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; and genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

Employee/Applicant Signature: _____

Date: _____

Operating Budget Detail

Acct		2016		2017
41000	**Full time salaries**	725,812		744,290
41030	**Part time salaries**	44,582		88,234
	Overtime	428		0
	Sick leave payout - $15,000 obligation when Goldsmith leaves state service	0		0
41070	**Other Benefits**	3,891		5,070
41100	**Space Rental**	39,490		39,490
41110	**Printing and advertising**	1,140		4,750
41130	Prof Technical Services	322		1,500
41145	**IT Prof Technical Services**	115,925		105,000
41150	**Computer systems and services**	5,577		19,000
41155	**Communications**	8,354		10,200
41160	**Travel - in state**	1,584		2,642
41170	**Travel - Out of state**	4,353		5,480
41180	**Employee development**	2,860		7,320
41190	**State agency provided svcs**	0		4,050
41196	**Centralized IT (MN.IT)**	9,634		11,660
41300	**Supplies**	2,786		3,857
41400	**Equip. rental**	3,764		3,470
41500	**Maintenance and repairs**	1,969		2,150
43000	**Other operating costs**	292		530
47060	**Equipment - capital (carry forward / reserve)**	0		
47160	**Equipment - non-capital**	1,244		9,300
	Operating exp total	974,007		1,067,993
	Appropriation	1,014,000		1,028,000
	Carry forward from prior year			39,993
	Total available			1,067,993
	Surplus (Shortage)	39,993		0

Minnesota

Campaign Finance and Public Disclosure Board

Date: July 26, 2016

To: Board Members

From: Jeff Sigurdson, Assistant Director **Telephone:** 651-539-1189

Re: Noncampaign Disbursement Reference Guide

During recent Board investigations it became apparent that some candidates and committee treasurers are either unfamiliar with the noncampaign disbursement categories or misunderstand the limitations on those categories. To help resolve this problem staff has compiled the statutes, administrative rules, advisory opinions, and Board findings on the use of campaign committee funds for noncampaign disbursements.

This compilation of information will be provided in two documents that are aimed at somewhat different audiences. The first, provided here, is a condensed reference guide on noncampaign disbursements. The guide provides an overview of specific noncampaign disbursement categories that have been problematic, briefly reviews relevant decisions reached by the Board in advisory opinions and findings, and provides a citation to specific advisory opinions and findings that readers can use to review source documents directly for more information. The online version will include links directly to the source document.

Staff believes that the format of this guide will appeal to the campaign staff of the party caucuses, legal counsel, and more experienced candidates and treasurers. A similar approach has been used in the gift ban primer, which has proved popular and useful to lobbyists and legal counsel who are trying to determine if an action would violate the prohibition on gifts to public officials.

Staff will also condense the information in this guide into a new section for the candidate handbooks. The handbooks are written with new treasurers and candidates as the intended audience, and are written in a style that is more approachable for individuals new to the requirements of Chapter 10A. The narrative section will be added to the handbooks as staff time allows.

<u>Attached Document</u>
Guide to Noncampaign Disbursement Classifications

Minnesota

Campaign Finance and Public Disclosure Board

190 Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

GUIDE TO NONCAMPAIGN DISBURSEMENT CLASSIFICATIONS

TABLE OF CONTENTS

Introduction..... **- 2 -**

Noncampaign Disbursement Classifications..... **- 2 -**

Board Decisions..... **- 2 -**

Food/beverage and fundraiser expenses.....- 2 -

Technology purchases: .....- 4 -

Membership in organizations and conferences:.....- 4 -

Mileage reimbursement and travel expenses: .....- 5 -

Payment for legal services: .....- 6 -

Cost of replacement campaign material:.....- 6 -

Post-election costs: .....- 6 -

Costs of serving in office: .....- 7 -

Constituent services: .....- 8 -

Other:.....- 10 -

MINN. STAT. § 10A.01 ..... - 11 -

MINN. R. 4503.0900 ..... - 13 -

MINN. STAT. § 211B.12 ..... - 14 -

This document is available in alternative formats to individuals with disabilities by calling 651/539-1180; 800/657-3889; or through the Minnesota Relay Service at 800/627-3529.

Introduction

Minnesota Statutes section 211B.12 provides that money collected for political purposes cannot be converted to personal use. Candidate committees must use money collected for political purposes either for expenditures reasonably related to the conduct of an election campaign or for noncampaign disbursements.

Minnesota Statutes section 10A.01, subdivision 26, and Minnesota Rules 4503.0900, subpart 1, list the noncampaign disbursements that may be made by principal campaign committees. Noncampaign disbursements do not count against a committee's spending limit.[1]

The Campaign Finance and Public Disclosure Board has issued a number of advisory opinions and enforcement decisions regarding noncampaign disbursements over the years. The Board now seeks to provide greater guidance to committees regarding the use of the various noncampaign disbursement categories by summarizing those decisions, along with the relevant statutes and rules, in this guide.

Noncampaign Disbursement Classifications

The statutes and rules recognize 29 separate categories of noncampaign disbursements. If an expenditure does not fit into one of the listed classifications it is considered to be a campaign expenditure.[2] The Board has consistently noted that campaign funds are contributions made to a committee, often by individual citizens, to help elect the candidate. For that reason, the Board has concluded that statutes permitting the use of committee funds for purposes not related to getting elected (i.e., noncampaign disbursements) should be applied narrowly.[3]

The fact that an expenditure does not meet the definition of a noncampaign disbursement does not mean that the expense is prohibited. The expense may still be considered a campaign expenditure if it is made to influence the election of the candidate.

Board Decisions

The following sections summarize relevant advisory opinions (noted by number) and enforcement actions (noted by subject and date) by general subject matter.

<u>Food and beverage and fundraiser expenses</u>

Payment for food, beverages, and necessary utensils and supplies, entertainment, and facility rental for a fund-raising event

The cost of paying for a candidate's band to play at a fundraising event is classified as a noncampaign disbursement for entertainment at a fundraising event. The cost of paying for a candidate's band to play

---

[1] Noncampaign disbursements are excluded from the definition of "campaign expenditure." *See* Minn. Stat. § 10A.01, subd. 9.

[2] "A 'campaign expenditure' means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question." Minn. Stat. § 10A.01, subd. 9.

[3] *See* Findings in the matter of the Joe Atkins for State Representative Committee (May 27, 2016).

at a community event that is neither a campaign event nor a campaign fundraiser is not a permissible use of committee funds. (#362)

This category does not apply to payments for food, beverages, or entertainment made by the candidate at fundraisers held by entities other than the candidate's own principal campaign committee. (Findings in the matter of the Complaint Against the People for (Gregory) Davids Committee, Aug. 15, 2006).

Payment for food and beverages consumed by a candidate and volunteers while engaged in campaign activities

This category does not apply to food and beverages provided to volunteers who are distributing constituent services literature during the time when such literature qualifies as a noncampaign disbursement. Volunteers distributing constituent service publications during the time when those publications qualify as a noncampaign disbursement are by definition not campaigning for the legislator. (Findings in the matter of the Joe Atkins for State Representative Committee, May 27, 2016).

This category applies only to food and beverages provided to volunteers campaigning for the committee's own candidate. It does not apply to food and beverages provided to volunteers while they are campaigning for other state candidates because those costs are in-kind contributions to the other candidates. (Findings in the matter of the Joe Atkins for State Representative Committee, May 27, 2016).

Meals provided during non-election years at meetings with individuals who are writing campaign material for use during the upcoming election and with individuals who volunteered for the campaign in prior years to plan activities for the next election are permissible. There are no time constraints on this noncampaign disbursement category and planning for an election in a non-election year may reasonably be considered to be a campaign activity. This category, however, does not extend to the cost of meals or beverages provided as a thank you to volunteers and supporters. A committee treasurer should ensure that the purpose of the meeting qualifies as a campaign activity that supports the election of the candidate. (Findings in the matter of the Joe Hoppe Volunteer Committee, May 27, 2016).

Meals that are required by local organizations that the candidate joins to raise his or her profile in the community and to promote the campaign are permissible. (Findings in the matter of the Joe Hoppe Volunteer Committee, May 27, 2016).

Payment for food or a beverage consumed while attending a reception or meeting directly related to legislative duties

This category applies only to meals purchased for the officeholder, not for others attending a meeting. (In the matter of the Complaint Against the People for (Gregory) Davids Committee, Aug. 15, 2006); *restated in* (Findings in the matter of the Joe Atkins for State Representative Committee, May 27, 2016).

This category is limited to organized receptions or meetings and is not available for lunches or dinners with staff or colleagues, even if legislative business is discussed at these meals. (Findings in the matter of the Joe Atkins for State Representative Committee, May 27, 2016).

Payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses

Providing a meal is not a required part of the interview process for hiring staff to operate a gubernatorial transition office and the meal may not be classified as a noncampaign disbursement. (#346).

A principal campaign committee may not classify the cost of providing food for staff of an elected official at a social get-together after a training session as a noncampaign disbursement. It is not reasonably required or even expected that an elected official provide dinner for staff attending an after-hours event. (#354).

The purchase of meals for legislative staff is not a cost of serving in office that may be paid for with campaign funds. (Findings in the matter of the Joe Hoppe Volunteer Committee, May 27, 2016).

Other

Buying a person a meal, or buying oneself a meal at a constituent meeting, is not a service for constituents within the meaning of the noncampaign disbursement classification. (In the matter of the Complaint Against the People for (Gregory) Davids Committee, Aug. 15, 2006).

Technology purchases:

The purchase of computer equipment with committee funds is a campaign expenditure. (#89, 209, 211, 228).

The purchase of a fax machine with committee funds is a campaign expenditure even if the primary purpose of the machine is for noncampaign disbursement services. Payment for capital goods from committee funds is always a campaign expenditure and no basis exists for dividing the cost between the campaign expenditure and noncampaign disbursement classifications. (#127).

The Board has long recognized that the purchase of a computer for use by a registered committee is a permitted campaign expenditure as long as the computer is only used for purposes related to the committee. A computer purchased with committee funds when the candidate is not running for office and which cannot reasonably be related to the campaign is a conversion to personal use. (Investigation of the Timothy Manthey for Senate Committee, October 7, 2014).

The use of committee funds to pay for an elected official's cellphone access may be considered an expense of serving in public office if the phone is used for communications related to serving in office. A committee may also pay for a candidate's cellphone service if the phone is used to support the campaign. The cost of a cellphone plan used in support of the campaign is reported as a campaign expenditure. Paying for family cell phone lines is a conversion to personal use. (Findings in the matter of the Joe Atkins for State Representative Committee, May 27, 2016); (Findings in the matter of the Joe Hoppe Volunteer Committee, May 27, 2016).

Membership in organizations and conferences:

Belonging to a local organization like the Rotary Club can raise the profile of the candidate to voters in the candidate's district and generally serves as an opportunity to promote the campaign. For that reason the Board has accepted reports by campaign committees that disclose membership dues to local

organizations as campaign expenditures. (Findings in the matter of the Joe Hoppe Volunteer Committee, May 27, 2016).

The costs of attending functions which directly relate to, and assist a legislator in, the performance of official duties are noncampaign disbursements. A primary reason these costs are incurred is to assist in performing as a legislator. (#255).

The cost of attending conferences at which subjects before the legislature are discussed (e.g., National Conference of State Legislatures) may be paid for with committee funds and reported as a noncampaign disbursement. (Findings in the matter of the Joe Hoppe Volunteer Committee, May 27, 2016).

Mileage reimbursement and travel expenses:

Travel, lodging, and other costs to attend certain task force meetings and conferences are noncampaign disbursements if the reason that the candidate attends these events is to assist the legislator in performing his or her duties and the candidate would not attend the event if he or she were not a legislator. (#277).

Under certain circumstances, funds from a principal campaign committee may be used to pay for travel expenses incurred by a candidate in order to participate in work group and conference committee meetings related to a special session of the legislature. (#329).

Mileage reimbursements paid to an intern who provided constituent services for a member of the legislature may be classified as a noncampaign disbursement. (#378).

Mileage reimbursements for trips back to the candidate's district to collect and process constituent mail and to meet with constituents are noncampaign disbursements. (In the matter of the Complaint Against the People for (Gregory) Davids Committee, Aug. 15, 2006).

Mileage reimbursements for legislative trips to meetings and events are noncampaign disbursements and likely classified as expenses of serving in office. Costs of attending conferences related to legislative duties are also classified as expenses of serving in office. (In the matter of the Complaint Against the People for (Gregory) Davids Committee, Aug. 15, 2006).

The cost of travel to a conference outside the state is an expense of serving in public office where the conference is relevant to a committee on which the legislator serves. (In the matter of the Complaint Against the People for (Gregory) Davids Committee, Aug. 15, 2006).

Reimbursement for travel to a location to give a presentation or appear on a panel because of status as a legislator is a permissible noncampaign disbursement. (Findings in the matter of the Joe Atkins for State Representative Committee, May 27, 2016).

Mileage reimbursements for driving to work at the Capitol, or to a private office even if legislative work is conducted at that office, are not permitted as noncampaign disbursements. The noncampaign disbursement category for costs of serving in office specifically states that the costs are "other than for personal uses." The cost of getting to work is a personal expense for almost every employed person; not a cost unique to serving in the legislature. (Findings in the matter of the Joe Atkins for State Representative Committee, May 27, 2016). Board staff, however, has recognized that costs of getting to

work for out-state legislators may be unique and subject to different treatment. There is no formal Board guidance on this question.

Trips that are for general fact finding and relationship building (e.g., visiting DC congressional delegation) are not reasonable costs of serving in office that may be paid for with campaign committee funds. (Findings in the matter of the Joe Hoppe Volunteer Committee, May 27, 2016).

Payment for legal services:

Under certain circumstances, funds from a principal campaign committee may be used to pay for legal services if the services relate to the candidate's chances of election and the candidate does not personally benefit from the services. (#328).

Costs of civil litigation not related to a campaign are not expenses of serving in office that may be classified as noncampaign disbursements. (#314, 318).

Cost of replacement campaign material:

The cost of campaign material purchased to replace defective campaign material, if the defective material is destroyed without being used

The use of insurance proceeds to replace destroyed campaign signs is a noncampaign disbursement. (#239).

The cost of replacing campaign lawn signs which were stolen before they were ever used is a noncampaign disbursement to the extent that it does not exceed the cost of the stolen signs. (#256).

Post-election costs:

Costs of a postelection party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first

Costs paid by a principal campaign committee for a party given in an election year, after the general election, and upon the retirement from public office of the candidate are noncampaign disbursements. (#285).

After the close of filing for office and if the candidate has not filed for office, and is therefore precluded from appearing in the election, costs paid by the candidate's committee for a party in the election year may be classified as a noncampaign disbursement even if the party is held before the general election. (#424).

Recount costs

A contribution to a fund established to support a candidate's participation in a recount of ballots affecting that candidate's election is a noncampaign disbursement. A recount of ballots will ascertain the result of the election, but it will not influence that election. (#415). Note: This noncampaign disbursement is not provided by rule or statute, but was recognized by the Board under its statutory authority to recognize new noncampaign disbursements through the advisory opinion process.

Costs of serving in office:

Payment of expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities

Payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses

Board advisory opinions on the costs of serving in office have been consistent in informing committees that this category does not apply broadly to any and all expenses that may relate to being a legislator. Rather, the Board has recognized that this category is appropriate only for expenditures that would not have been incurred if the individual was not specifically a legislator. (Findings in the matter of the Joe Atkins for State Representative Committee, May 27, 2016).

The use of committee funds to pay for a candidate's cellphone access may be considered an expense of serving in public office. Paying for family cell phone lines is a conversion to personal use. (Findings in the matter of the Joe Atkins for State Representative Committee, May 27, 2016); (Findings in the matter of the Joe Hoppe Volunteer Committee, May 27, 2016).

Committee funds used for expenses directly related to serving in public office that are incurred after the general election, but before the candidate is actually sworn in, are classified as noncampaign disbursements. (#253).

Costs of computer training that is needed to enable a legislator to use a state-provided personal computer may be classified as a noncampaign disbursement. (#266).

Certain expenses related to the operation of a transition office for governor may be paid by a principal campaign committee as noncampaign disbursements. (#391) However, providing a meal is not a required part of the interview process for hiring staff to operate a gubernatorial transition office and the meal cannot be classified as a noncampaign disbursement. (#346).

The costs of attending functions which directly relate to, and assist a legislator in, the performance of official duties are noncampaign disbursements. A primary reason these costs are incurred is to assist in performing as a legislator. (#255).

The cost of attending conferences at which subjects before the legislature are discussed (e.g., National Conference of State Legislatures) may be paid for with committee funds and reported as a noncampaign disbursement. (Findings in the matter of the Joe Hoppe Volunteer Committee, May 27, 2016).

A principal campaign committee may not classify the cost of providing food for staff of an elected official at a social get-together after a training session as a noncampaign disbursement. It is not reasonably required or even expected that an elected official provide dinner for staff attending an after-hours event. (#354).

The purchase of meals for legislative staff is not a cost of serving in office that may be paid for with campaign funds. (Findings in the matter of the Joe Hoppe Volunteer Committee, May 27, 2016).
Costs of providing home health care for a close relative of the candidate, and for whom the candidate usually provides home health care, incurred while the candidate is travelling are not noncampaign disbursements. Every office holder incurs various personal costs as a result of service in office. Such

costs are only indirectly related to the official's public service and are not the ordinary expenses that are required of all officials. (#411). However, there is a specific noncampaign disbursement for the cost of childcare provided to the candidate's children while the candidate is campaigning.

The cost of business cards is an expense of serving in public office that may be reported as a noncampaign disbursement. (Findings Regarding a Complaint against Representative Greg Davids, Jan. 15, 2004).

Housing costs associated with travel to the Capitol as part of legislative duties during periods when the legislative per diem reimbursement is not available are properly reported as costs of serving in office. (In the matter of the Complaint Against the People for (Gregory) Davids Committee, Aug. 15, 2006).

The cost of a speeding ticket cannot be classified as a cost of serving in office even if the candidate was on the way home from a late session when he got the ticket. These expenses are limited to the ordinary and reasonable costs associated with activities that are expected or required of a public official. A speeding ticket is not an activity expected or required of a public official. (Revised Findings and Order in the Matter of the Complaint of Steven Timmer Regarding Representative Ernest Leidiger and Steven Nielsen, May 1, 2012).

See the section on mileage reimbursement and travel for additional expenditures that can and cannot be claimed as costs of serving in office.

Constituent services:

Services for a constituent by a member of the legislature or a constitutional officer in the executive branch, including the costs of preparing and distributing a suggestion or idea solicitation to constituents, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held, and half the cost of services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from adjournment sine die to 60 days after adjournment sine die

The cost to an incumbent or a winning candidate of providing services to residents in the district after the general election in an election year for the office held

Committee funds that are used to educate or inform other legislators and candidates about legislative issues in which the candidate is interested do not qualify as noncampaign disbursements for constituent services. Constituent services must actually serve the constituent in some way and not simply enhance the candidate's reputation. (#248).

The provision of bus transportation by a legislator's principal campaign committee so that the legislator's constituents may attend an educational day at the Capitol during session is a noncampaign disbursement. (#307).

The costs of an informational mailing to constituents are reported as noncampaign disbursements for constituent services. (#313).

A political party unit that contributes time on a local cable TV program to a candidate is making an in-kind contribution to the candidate that counts against the party unit contribution limit of the candidate. The in-kind expenditure is categorized as either a campaign expenditure or a noncampaign disbursement by the

candidate depending on the status of the candidate, the date(s) on which the program is broadcast, and other factors. (#365).

The cost of producing an informational magnet that will be distributed to constituents is a noncampaign disbursement. Distribution of the magnet and an explanatory note are constituent services, the costs of which are to be reported as noncampaign disbursements or campaign expenditures depending on the time when distribution is made. (#388).

When a telephone survey does not clearly provide a service to the voters who are called, and where the survey provides the candidate who conducts it with information about voters' positions on issues, as well as information by which to gauge the potential for obtaining contributions from those voters, the costs of the survey must be reported as campaign expenditures. (#403).

Buying a person a meal, or buying oneself a meal at a constituent meeting, is not a service for constituents within the meaning of the noncampaign disbursement classification. (In the matter of the Complaint Against the People for (Gregory) Davids Committee, Aug. 15, 2006).

Postage spent on constituent services that neither solicit campaign funds nor ask for votes is properly classified as a noncampaign disbursement. Costs of establishing a constituent services office in a candidate's district may be considered a noncampaign disbursement during the appropriate period. (Findings Regarding a Complaint against Representative Greg Davids, Jan. 15, 2004).

Buying pens with the candidate's name, public office or title, and telephone number printed on them is not a constituent service but, instead, a campaign expenditure. (In the matter of the Complaint Against the People for (Gregory) Davids Committee, Aug. 15, 2006).

A constituent services piece may not advocate for the re-election of the legislator or solicit campaign contributions. (Findings in the matter of the Joe Atkins for State Representative Committee, May 27, 2016).

Office equipment, phone lines, rent, utilities and supplies may be considered constituent services during the relevant time periods if the subject office and its equipment are operated solely for responding to constituents and providing constituent services. (Findings Regarding a Complaint against Representative Greg Davids, Jan. 15, 2004).

See the section on mileage reimbursement and travel for additional expenditures that are permitted or prohibited when classified as costs of constituent services.

A candidate's committee may, under certain circumstances, pay for use of office space as a constituent service. Payments from the committee to a business must reflect actual use to avoid an inadvertent corporate contribution that might occur if the amount paid is not fair market value for the services received. A log of constituent meetings with the number, dates, and duration of visits is needed to meet the record keeping requirements and to calculate what percentage of time the office is used for constituent services. Any additional identifiable office costs, for example the use of a copier or a dedicated phone line, must be added to the fair market value of the space provided. In addition, personal phone calls or visits that are short in duration, limited in number, and do not significantly interfere with the employee's work do not result in a prohibited corporate contribution and are considered contributions from the employee. A corporate contribution may nevertheless occur if the employee's activity causes an actual increase in the corporation's operating costs, for example if the employee is given greater latitude

to make personal phone calls or uses a photocopier. (#442). Candidates intending to use this noncampaign disbursement are advised to consult with Board staff to fully understand the requirements of this noncampaign disbursement.

Other:

Funds donated by a terminating candidate committee to the state general fund or to a county obligated to incur special election expenses due to that candidate's resignation are noncampaign disbursements. (433).

The cost of signs advertising a legislator's name, telephone number, and status as an official must be reported as campaign expenditures. (#275,442).

Subd. 26. Noncampaign disbursement. "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in kind received, by a principal campaign committee for any of the following purposes:

(1) payment for accounting and legal services;

(2) return of a contribution to the source;

(3) repayment of a loan made to the principal campaign committee by that committee;

(4) return of a public subsidy;

(5) payment for food, beverages, and necessary utensils and supplies, entertainment, and facility rental for a fund-raising event;

(6) services for a constituent by a member of the legislature or a constitutional officer in the executive branch, including the costs of preparing and distributing a suggestion or idea solicitation to constituents, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held, and half the cost of services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from adjournment sine die to 60 days after adjournment sine die;

(7) payment for food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities;

(8) payment for food or a beverage consumed while attending a reception or meeting directly related to legislative duties;

(9) payment of expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities;

(10) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses;

(11) costs of child care for the candidate's children when campaigning;

(12) fees paid to attend a campaign school;

(13) costs of a postelection party during the election year when a candidate's name will no longer appear on a ballot or the general election is concluded, whichever occurs first;

(14) interest on loans paid by a principal campaign committee on outstanding loans;

(15) filing fees;

(16) post-general election holiday or seasonal cards, thank-you notes, or advertisements in the news media mailed or published prior to the end of the election cycle;

(17) the cost of campaign material purchased to replace defective campaign material, if the defective material is destroyed without being used;

(18) contributions to a party unit;

(19) payments for funeral gifts or memorials;

(20) the cost of a magnet less than six inches in diameter containing legislator contact information and distributed to constituents;

(21) costs associated with a candidate attending a political party state or national convention in this state;

(22) other purchases or payments specified in board rules or advisory opinions as being for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question; and

(23) costs paid to a third party for processing contributions made by a credit card, debit card, or electronic check.

The board must determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision.

A noncampaign disbursement is considered to be made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

Minn. R. 4503.0900

Subpart 1. Additional definitions. In addition to those listed in Minnesota Statutes, section 10A.01, subdivision 26, the following expenses are noncampaign disbursements:

A. transportation, meals, and lodging paid to attend a campaign school;

B. costs of campaigning incurred by a person with a disability, as defined in Minnesota Statutes, section 363A.03, subdivision 12, and which are made necessary by the disability;

C. the cost to an incumbent or a winning candidate of providing services to residents in the district after the general election in an election year for the office held;

D. payment of advances of credit in a year after the year in which the advance was reported as an expenditure;

E. payment of fines assessed by the board; and

F. costs of running a transition office for a winning gubernatorial candidate during the first six months after election.

Subp. 2. [Repealed, 21 SR 1779]

Subp. 3. Reporting purpose of noncampaign disbursements. Itemization of an expense which is classified as a noncampaign disbursement must include sufficient information to justify the classification.

Minn. Stat. § 211B.12

Legal Expenditures

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

(1) salaries, wages, and fees;

(2) communications, mailing, transportation, and travel;

(3) campaign advertising;

(4) printing;

(5) office and other space and necessary equipment, furnishings, and incidental supplies;

(6) charitable contributions of not more than $100 to any charity organized under section 501(c)(3) of the Internal Revenue Code annually, except that the amount contributed is not limited by this clause if the political committee, political fund, party unit, principal campaign committee, or campaign fund of a candidate for political subdivision office that made the contribution dissolves within one year after the contribution is made; and

(7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

Minnesota

Campaign Finance and Public Disclosure Board

Date: July 26, 2016

To: Board members

From: Gary Goldsmith, Executive Director **Telephone:** 651-539-1189

Re: Rulemaking petition

On June 13, 2016, the Board received a petition for rulemaking pursuant to Minnesota Statutes section 14.09. The petition was submitted by George Beck. Mr. Beck submitted a substantially similar petition in April but withdrew it before the May meeting.

The petition asks the Board to adopt a rule establishing what constitutes “cooperation,” “implied consent,” and “action in concert with” for candidates and independent expenditure committees (IECs). The petition notes that Minnesota Statutes section 10A.01, subdivision 9, uses these terms to describe an independent expenditure but does not define them. The petition states that a rule is needed to better explain these terms to candidates and IECs so that they can comply with the statutes and avoid campaign finance violations. The petition also says that the rule is necessary because cooperation between candidates and IECs essentially circumvents the contribution limits and renders them meaningless.

Minnesota Statutes section 14.09 requires an agency receiving a petition for rulemaking to respond within 60 days. The reply must be in writing and must give a specific and detailed description of the agency’s planned disposition of the request and its reasons for that disposition. The statute does not require the agency to specifically accept or deny the petition; only to respond to it. The practice in most state agencies is to respond in a meaningful way without a specific acceptance or rejection. The reply must be signed by a Board member or officer.

A proposed response to the petition is attached to this memo. A communication from an interested party in support of the petition is also attached.

Attachments
Petition for rulemaking
Proposed response
Communication from James D. Herrick

August 2, 2016

George A. Beck
4327 Brook Lane
Minneapolis, MN 55416

Re: Response to petition for rulemaking

Dear Mr. Beck:

The Campaign Finance and Public Disclosure Board received your petition for rulemaking on June 13, 2016.

At this time the Board's resources and staff time are dedicated to a significant redesign of our website and to the increased compliance and reporting duties resulting from this year's primary and general elections. More importantly, the Board's current executive director has announced that he soon will be stepping down from this position. The Board therefore will have a new executive management team within the next few months.

Based on these factors, the Board will not initiate a rulemaking at this time based on your petition. However, it will ask the new executive director to review topics for potential rulemaking in 2017, including the topics noted in your petition, and to bring those topics to the Board for discussion at an appropriate time. The Board then will decide whether to pursue a rulemaking and what topics to include in the rulemaking, if one is undertaken.

We deeply appreciate your continued close interest in the Board's work.

With warmest regards,

Daniel N. Rosen
Chair

Revised: 7/26/16

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
August, 2016

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Jeffrey Hoffman	Yellow Medicine River Water District	Unfiled Economic Interest Statement due January 25, 2016	$100 LF $1,000 CP	7/7/16				
Larry Stelmach	West Mississippi Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	$100 LF $1,000 CP	7/7/16				
	West Mississippi Watershed Mgmt Commission	Late Filing of Economic Interest Statement due July 19, 2015	$100 LF $1,000 CP					
	Shingle Creek Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	$100 LF $1,000 CP					
	Shingle Creek Watershed Mgmt Commission	Late Filing of Economic Interest Statement due July 19, 2015	$100 LF $1,000 CP					

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
David Berglund	Cook Soil and Water Conservation District	Unfiled Economic Interest Statement due January 25, 2016 Untimely Filing of 2015 Economic Interest Statement Untimely Filing 2011 Economic Interest Statement	$100 LF $1,000 CP $80 LF $100 LF $100 CP	7/7/16				
Jeffrey Johnson	Shingle Creek Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	$100 LF $1,000 CP	7/7/16				

CLOSED FILES

Candidate/Treasurer/ Lobbyist	Committee	Report Missing/ Violation	Late Fee/ Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
	North East Social	2013 Lobbyist Principal Report 2014 Lobbyist Principal Report-Late filing	$1,000/$1,000 $475/$100	10/13/2015	12/31/2015			Closed

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

In the Matter of Leon Lillie for House (Registration No. 16132);

Background:
At its meeting of November 3, 2015, the Minnesota Campaign Finance and Public Disclosure Board (Board) entered into a conciliation agreement with the Leon Lillie for House committee (Committee) and State Representative Leon Lillie (Candidate). The agreement concerned a special source violation by the Committee during the 2013-2014 election segment.

On its 2013 Year-end Report of Receipts and Expenditures, the Committee reported accepting $3,875 from lobbyists, political committees and funds, and associations not registered with the Board. On its amended 2014 Year-end Report of Receipts and Expenditures, the Committee reported accepting $9,625 in contributions from lobbyists, political committees and funds, and associations not registered with the Board. The reported contributions from these sources during 2013 and 2014 totaled $13,500, exceeding the $12,500 aggregate special source limit for a state representative candidate during the 2013-2014 election segment by $1,000.

By letter on October 19, 2015, the candidate stated that he "took in too much association money" and "realizing mistake returned excess beyond required time." Because the Committee did not return the excess contributions within 90 days of receipt, the contributions were deemed by statute to have been accepted.

The conciliation agreement imposed a civil penalty of $1,000. However, only $250 of the civil penalty was due within 30 days. The remaining $750 was stayed by the agreement and was to be waived if the Committee did not violate the special source limit again before January 1, 2017.

In consideration for the stayed portion of the civil penalty, and to resolve the matter informally, the parties agreed to certain conditions. The Committee agreed that, among other things, beginning with the 2015 Year-end Report of Receipts and Expenditures, the Campaign Finance Reporter software would be used for the filing of required campaign finance reports. The software helps a committee identify potential violations of the campaign finance laws, including the special source limit.

However, the Committee did not use the Campaign Finance Reporter software to file its 2015 Year-end Report of Receipts and Expenditures, instead filing its report on a paper form. The conciliation agreement provided that, "If the candidate and the Leon Lillie for House committee do not comply with the provisions of this agreement, this matter may be reopened by the Board and the Board may take such actions as it deems appropriate." The Board, at its meeting of August 2, 2016, moved to reopen the matter pursuant to the conciliation agreement, due to the

Committee failing to file its 2015 Year-end Report of Receipts and Expenditures with the Campaign Finance Reporter software as required by the conciliation agreement.

Based on the investigation, the Board makes the following:

Findings of Fact

1. The Committee accepted $13,500 in contributions from lobbyists, political committees and funds, and associations not registered with the Board during the 2013-2014 election segment.

2. The Committee violated the terms of the conciliation agreement, which the Candidate signed on November 15, 2015, by failing to file its 2015 Year-end Report of Receipts and Expenditures electronically using the Campaign Finance Reporter software.

Conclusions of Law

1. The Committee violated Minnesota Statutes section 10A.27, subdivision 11, when it accepted $13,500 in contributions from lobbyists, political committees and funds, and associations not registered with the Board during the 2013-2014 election segment, in excess of the statutory limit of $12,500.

Based on the above Findings of Fact and Conclusions of Law, the Board issues the following:

Order

1. The conciliation agreement approved by the Board at its meeting of November 3, 2015, and which the Candidate signed on November 15, 2015, is revoked.

2. The Board orders the Committee to pay a civil penalty of $1,000, $250 of which has already been paid as required by the prior conciliation agreement. The remaining civil penalty must be paid by check or money order made payable to the State of Minnesota within 30 days of the date of this Order.

3. The Committee shall file its reports electronically in the future pursuant to the statutory requirement in Minnesota Statutes section 10A.025, subdivision 1a.

4. If the Committee does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.

5. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5 (a).

Dated: August 2, 2016

Daniel N. Rosen, Chair
Campaign Finance and Public Disclosure Board