

Clearinghouse Rule 17-036

SS# 073-16, Wisconsin Administrative Register No. 728A3, 8/15/2016

WISCONSIN ETHICS COMMISSION Proposed Rule Making Order

INTRODUCTORY CLAUSE

The Wisconsin Ethics Commission proposes an order to amend ETH 6, related to procedures used by the Ethics Commission.

RULE SUMMARY

A. **Statutes interpreted:** ss. 11.0102, 11.0103, 11.0104, 11.0105, 11.0202, 11.0203, 11.0204, 11.0302, 11.0303, 11.0304, 11.0402, 11.0403, 11.0404, 11.0502, 11.0503, 11.0504, 11.0505, 11.0602, 11.0603, 11.0604, 11.0605, 11.0702, 11.0703, 11.0704, 11.0802, 11.0803, 11.0804, 11.0902, 11.0903, 11.0904, 11.1001, 11.1304, 19.46(2).

B. **Statutory authority:** The Ethics Commission has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 11.1304(17), Stats.:

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

s. 19.48(1), Stats.:

19.48 Duties of the ethics commission. The commission shall:
(1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

227.11 Extent to which chapter confers rule-making authority.

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

C. **Explanation of agency authority:** The Ethics Commission has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19. Each state agency may promulgate rules interpreting the provisions of any statute enforced or

administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

D. Related statute(s) or rule(s): ETH 1.39.

E. Plain language analysis: Chapter ETH 6 was created and transferred to the Ethics Commission pursuant to the determination of the Secretary of Administration as directed by 2015 Wisconsin Act 118, Section 266(6). The purpose of this rulemaking is simply to update Chapter ETH 6 to remove language related to the subject matter now under the jurisdiction of the Elections Commission and add relevant statutory references that changed under 2015 Wisconsin Act 117.

F. Summary of, and comparison with, existing or proposed federal regulations: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule. However, similar rules for the FEC require a committee to file all reports electronically if their total contributions or expenditures exceed \$50,000 in a calendar year. 11 CFR 104.18. The FEC does not permit filing by fax. All filings must either be filed electronically, by mail, or by hand-delivery.

G. Comparison with similar rules in adjacent states:

Illinois: The Campaign Disclosure Guide published in 2016 states that reports may be submitted facsimile so long as the original record of the document and transmission date are retained by the filer. Neither the Illinois Campaign Disclosure Act of 2016, nor rules of the Illinois State Board of Elections address informal advice given from staff to interested parties.

Iowa: All filing reports are permitted to be sent by facsimile transmission, electronic mail, United States postmark or by hand so long as they are received prior to the due date. IOWA CODE § 68.402(1). In practice the Board issues informal advice on a regular basis and issues declaratory orders when a formal petition is submitted to the Board regarding the applicability of statutes, policies decisions, or orders. IOWA ADMIN. CODE r. 351—12.7(1).

Michigan: State law requires committees that received or expended \$5,000 in the preceding calendar year to file all statements and reports electronically. MICH. COMP. LAWS § 169.218. Staff may issue advice within the parameters of declaratory rulings and interpretive statements already issued at the discretion of the Secretary of State. For matters outside of declaratory rulings, interested persons must submit a request for a new ruling. MICH. COMP. LAWS § 169.215(2).

Minnesota: All campaign finance filings are required electronically, unless a waiver is granted by the Campaign Finance and Public Disclosure Board. Filing electronically allows automatic rejection if filings, reports and registrations are incomplete or incorrect. MINN. STAT. § 10A.025 (2016). Filing by facsimile or electronic transmission has the same force as an original paper document, however the filer is required to maintain an original copy with the date of transmission. MINN. R. 4501.0500 (2006).

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

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

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

K. **Agency contact person:**

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L. **Place where comments are to be submitted and deadline for submission:**

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 6, 2017. Written comments should be addressed by mail to: David Buerger, P.O. Box 7984, Madison, WI 53707-7984; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

TEXT OF RULE

SECTION 1. ETH 6.02 (1) and (2) are amended to read:

- ETH 6.02 Registration statement sufficiency.** (1) Any registration filed with a filing officer under ss. 11.0201, 11.0202, 11.0203, 11.0301, 11.0302, 11.0303, 11.0401, 11.0402, 11.0403, 11.0501, 11.0502, 11.0503, 11.0601, 11.0602, 11.0603, 11.0701, 11.0702, 11.0703, 11.0801, 11.0802, 11.0803, 11.0901, 11.0902, and 11.0903, Stats., which is insufficient as to essential form, information or attestation shall be rejected by such officer and shall be promptly returned if possible to the proposed registrant indicating the nature of the insufficiency. The proposed registrant shall be informed that the attempted registration is not effective.
- (2) Any registration statement filed with a filing officer under ss. 11.0201, 11.0202, 11.0203, 11.0301, 11.0302, 11.0303, 11.0401, 11.0402, 11.0403, 11.0501, 11.0502, 11.0503, 11.0601, 11.0602, 11.0603, 11.0701, 11.0702, 11.0703, 11.0801, 11.0802, 11.0803, 11.0901, 11.0902, and 11.0903, Stats., which is insufficient or incomplete in some manner but substantially complies with law shall be accepted by such officer who shall then promptly notify the registrant indicating the nature of the incompleteness or insufficiency. The registrant shall then have 15 days from the date of such notice to rectify the problem. If the incompleteness or insufficiency is not

rectified by the registrant within 15 days from the date of the notice, the registration lapses and is not effective.

SECTION 2. ETH 6.03 is amended to read:

ETH 6.03 Assistance by ethics commission staff. Pursuant to the authority and responsibility vested in the ethics commission by the statutes, specifically s. 19.46 (2), Stats., the staff of the board commission is authorized to provide advice to any interested person with respect to the proper application of ~~title II~~ ch. 11, subch. III of ch. 13, and subch. III of ch. 19, Stats. Such advice should not be construed as a formal opinion of the ~~board~~ commission under s. 19.46 (2) (c), Stats.

SECTION 3. ETH 6.04 (1) (a) is renumbered ETH 6.04 (1) (ar).

SECTION 4. ETH 6.04 (1) (ag) is created to read:

ETH 6.04 (1) (ag) "Commission" means the ethics commission.

SECTION 5. ETH 6.04 (1) (d), (2), (3) (a) and (b), and (4) to (6) are amended to read:

- (d) "Filing Local filing officer" means ~~the ethics commission or any other~~ an elections official, other than the commission, with whom ~~elections or~~ campaign finance documents are required to be filed ~~by chs. 5 to 12~~ under ch. 11, Stats.
- (2) ~~Nomination papers, recall petitions, and those campaign~~ Campaign finance reports provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0505, 11.0604, 11.0605, 11.0704, 11.0804, 11.0904, and 11.1001, Stats., may not be filed with the commission or a local filing officer by facsimile process. ~~Nomination papers and recall petitions shall not be considered filed with the filing officer until the signed original of each nomination paper and recall petition is received in the offices of the filing officer.~~ Campaign finance reports which are provided in ss. 11.0103, 11.0204, ~~11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, and 11.0904, and 11.1001,~~ Stats., and which are delivered by the U.S. mails are considered filed with the local filing officer when the report is postmarked. Campaign finance reports which are provided in ss. 11.0103, 11.0204, ~~11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, and 11.0904, and 11.1001,~~ Stats., and which are not delivered by the U.S. mails, are considered filed with the local filing officer when received in the local filing officer's offices. Campaign finance reports that are provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, 11.0904, and 11.1001, Stats., are considered filed with the commission when received in the commission's offices.
- (3)
- (a) A duplicate copy of the document is received by the commission or local filing officer, in its offices, by facsimile process, no later than the day and hour at which the document is required to be filed and
- (b) The signed original of the document is received at the offices of the commission or local filing officer with a postmark not later than the filing deadline; or the signed original is delivered to the commission or local filing officer not later than the filing deadline.

- (4) Any document which is filed by facsimile process under this rule shall be considered received at the time of transmission as recorded and entered by the receiving equipment by the commission or local filing officer's staff when the facsimile copy is delivered to the commission or local filing officer's offices.
- (5) If, for any reason, transmission of a document is not received at the commission or local filing officer's offices, whether because of a failure in the receiving system of the commission or local filing officer or because of a failure in the transmitting system of the person attempting to file or for any other reason, a document shall not be considered received or filed until a facsimile copy is delivered to and received at the commission or local filing officer's offices and the signed original is received at the commission or local filing officer's offices with a postmark not later than the filing deadline.
- (6) The burden of establishing that a document has been received by facsimile process at the offices of the commission or local filing officer shall be upon the person who, or the committee or group which, is required to file the document.

SECTION 4. ETH 6.05 (1) (a), (c), (f) and (2) are amended to read:

- ETH 6.05 (1)** (a) "Campaign period" for a candidate, ~~personal campaign committee or support committee~~ has the same meaning as provided in s. 11.1103, Stats., and for any other registrant begins on January 1 of an odd-numbered year and ends on December 31 of the following year.
- (c) "Electronic format" means ~~computer diskette or a computer data file created using Access or Excel software or software that produces a delimited text file.~~ the online system maintained by the commission for campaign finance registration and reporting.
 - (f) "Report" means any filing required by ss. 11.0103, 11.0204, 11.0304, 11.0404, ~~11.0501, 11.0502, 11.0503,~~ 11.0504, 11.0505 (~~3~~), 11.0604, 11.0605 (~~3~~), 11.0704, 11.0804, 11.0904, and 11.1001, Stats.
 - (2) Any registrant who files with the ethics commission and who accepts contributions or makes disbursements in a total amount or value of ~~\$20,000 or~~ more than \$1,000 during a campaign period shall file each campaign finance report that is required to be filed by ch. 11, Stats., in an electronic format.

SECTION 5. ETH 6.05 (5) and (6) are repealed.

SECTION 6. EFFECTIVE DATE: This rule shall take effect on the first day of the first campaign finance reporting period following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.