

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

Rule No.: ETH Ch. 26

Relating to: Ethics Commission Settlement Schedule

Rule Type: Permanent

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

The Commission proposes a rule to amend Wis. Admin. Code ETH 26 to further its compliance with the requirement of Wis. Stat. § 19.49(2)(b)10. This statute requires the Commission to prescribe, by rule, categories of civil offenses which the Commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The Commission may only settle alleged offenses, which in the opinion of the Commission, constitute a minor violation, a violation caused by excusable neglect, or which for other good cause shown is not in the public interest to prosecute. The Commission proposes to amend its existing settlement schedules for late continuing reports and late September reports, and create new settlement schedules for late special post-election reports, late payment of lobbying fees, and lobbying prior to authorization. The Commission also proposes to amend its rule throughout to clarify the word “days” as either calendar or business days.

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

The Ethics Commission began a review of its settlement schedules in June 2019. During that review process, the Commission considered the type of violations, the number of each type of violation, and a breakdown of when registrants ultimately complied.

Late Continuing Reports

Currently, the standard settlement schedule for late continuing reports provides that a registrant that files a continuing report within the first 30 days after the due date will receive a warning, regardless of whether the registrant has previously filed a continuing report late. After the 30 day period, a monetary component is included in the standard settlement schedule. This monetary component increases depending on the amount of time that the report is late and whether there was a prior late-filed continuing report by the registrant. Over the past three years, between 70-85% of the reports that were filed late were filed in the first 30-days following the deadline. The Commission seeks to make two changes to the standard settlement schedule for late continuing reports.

First, if a registrant has previously filed a campaign finance report late, the amended standard settlement schedule will provide for a monetary component beginning the day after the deadline. While overall compliance has improved since 2016, some registrants are beginning to treat the 30-day period following the deadline as a grace period. This change will result in better compliance with the statutory deadline.

Second, the Commission is seeking to reduce the amounts provided for in the existing portions of the standard settlement schedule that contain a monetary component. The Commission has found that most of the late reports are filed in the first 30-days following the deadline. The Commission

has also found that, when a registrant is late in filing its continuing report, factors other than the amount that may be sought in settlement appear to motivate registrants to get their reports filed.

Late September Reports

Under the current settlement schedule, September reports are treated similarly to continuing reports. However, because the September report is only due in even-numbered years to cover the window between the Pre-primary and Pre-election reports, it is more akin to those election-specific reports than the semi-annual January and July Continuing reports. It is also more time sensitive. For example, in 2020, the September report is due on September 22nd and the Pre-election report is due on October 26th. If a registrant filed its September report on October 21st, the current settlement schedule would only result in a warning and filing the September report the day after the general election would only reach the second tier of the schedule. The September report is intended to serve as an additional campaign finance report to be filed between the Pre-primary and Pre-election reports. As such, the Commission seeks to amend the rule to treat late September reports similarly to late Pre-primary and Pre-election reports.

Late Special Post-election Reports

Special post-election reports cover the period beginning 14 days prior to a special election and ending 22 days after a special election. These reports are due 45 days after the special election if no continuing report is due in that same window. Under the current settlement schedule post-election reports are treated similarly to Pre-primary and Pre-election reports. However, as the report is filed significantly after the election, there is not the same urgency to these reports. The Commission proposes to create a new schedule for Special post-election reports that would more accurately reflect the amounts appropriate to a late filing of this type.

Late Payment of Lobbying Fees

The Ethics Commission currently does not have a settlement schedule established in administrative code for the late payment of lobbying fees. The Commission believes that a rule will provide notice to the regulated community and will ensure consistency when considering these matters. Therefore, the Commission would like to adopt a rule for the late payment of fees by lobbyists and principals that is similar to the rule for late payment of filing fees by campaign finance registrants in Wis. Admin. Code ETH 26.02(3).

Lobbying Prior to Authorization

The Ethics Commission currently does not have a settlement schedule established in administrative code for instances of lobbying prior to authorization. In the Commission's experience, instances of lobbying prior to authorization are commonly caused by a misunderstanding of the Commission's lobbying registration process or a miscommunication between a lobbyist and a principal. Such matters are often amenable to quick settlement. Providing a clear and understandable settlement schedule for lobbying prior to authorization is expected to promote compliance among the regulated community with the Commission's lobbyist and lobbying principal registration processes.

Definition of "Days"

Finally, the Commission proposes to clarify the use of the word "days" throughout the rule as either calendar or business days. It is not clear whether the word "days" means calendar days or

business days. This has created some confusion among the regulated communities as to how to count days under the rule. By amending the rule to specify either calendar or business days in each schedule, the Commission would provide certainty to the regulated communities as to when they must act and what amount the Commission may seek for a given violation.

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

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

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

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

Wis. Stat. § 11.1304(17):

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

Wis. Stat. § 19.48(1):

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

Wis. Stat. § 227.11(2)(a):

227.11 Extent to which chapter confers rule-making authority.
(2) Rule-making authority is expressly conferred on an agency as follows:
(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

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

The Commission estimates that it will use approximately 0.05 FTE staff to develop this rule. This includes time required for research, rule drafting, preparing related documents, coordinating stakeholder meetings, holding public hearings, legislative review and adoption, and communicating the final rule with affected persons and groups. The Commission will use existing staff resources to develop this rule.

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

Candidates, political parties, and other registered committees; lobbyists and lobbying principals; state public officials; and the general public may be affected by the proposed rule.

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

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

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

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

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September 26, 2019

Date Submitted