

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

.....
July 8, 2014

Room 225

Minnesota Judicial Center

.....

MINUTES

The meeting was called to order by Chair Wiener.

Members present: Beck, Oliver, Peterson, Sande, Wiener

Others present: Goldsmith, Sigurdson, Fisher, Hegg, Pope, Schons, staff; Hartshorn, counsel

MINUTES (June 3, 2014)

After discussion, the following motion was made:

Member Sande's motion: To approve the June 3, 2014, minutes.

Vote on motion: Unanimously passed (Oliver absent).

CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for August 5, 2014. Executive Director Goldsmith reported that he will be unable to attend on this date. Mr. Goldsmith proposed holding the next meeting on August 12, 2014, and said that he would poll members to determine whether a quorum was available on that date.

EXECUTIVE DIRECTOR TOPICS

Status of office operations

Mr. Goldsmith reported that during the last month, staff had been busy with training and presentations.

Hiring new staff

Mr. Goldsmith introduced members to Dan Hegg, the Board's new student worker. Mr. Goldsmith reported that Mr. Hegg is a first-year student at the University of Minnesota Law School and would be helping with reconciliation issues, data entry, filing, and other projects.

Reconciliation of board data

Assistant Director Sigurdson presented members with a memorandum on this topic that is attached to and made a part of these minutes. Mr. Sigurdson said that with the Board's staff now at full complement, it had been easier to assign staff to work on the reconciliation of contributions made in prior reporting years. Mr. Sigurdson stated that, in particular, Mr. Schons had made progress working on the 2011 contributions that did not reconcile. Mr. Sigurdson reported that Mr. Schons had been able to resolve 113 transfers totaling \$209,905 from a manual inspection of reports and amendments already on file with the Board. This represented a 48% reduction in the number of records that did not reconcile and a 56% reduction in the dollar value of the records that did not reconcile. Mr. Sigurdson stated that Mr. Schons would continue working on 2011, and Mr. Hegg would start a similar review of the 2010 contributions that did not reconcile.

Mr. Sigurdson reported that with Board approval, staff was trying a different approach with the 2013 reconciliation. Mr. Sigurdson said that in the past, staff would correct obvious reporting errors (for example, reporting a contribution to a candidate on the schedule for expenditures) and then send a change letter to the treasurer as notification of the change and explanation as to why it was needed.

Mr. Sigurdson explained that this approach had many problems. It was time consuming and shifted the responsibility for correcting reports to staff. If the committee did not change the record in the Campaign Finance Reporter software the correction would be overwritten when the next electronic report was filed. Most importantly, treasurers were not learning how to correctly report the information as the same types of reporting errors were occurring again and again.

Mr. Sigurdson stated that this year, staff sent a different type of reconciliation notice to committees. The notice was more educational. It contained information on how a reporting error might create a reconciliation problem, how to identify and correct a reporting error in the software, and how to submit an amendment. The letter also provided staff contacts for additional help. But in the end, the committee was required to correct the error (if needed) and to submit an amendment.

Mr. Sigurdson said that the initial results from this approach were encouraging, albeit incomplete. Of the initial \$441,497 in contributions that did not reconcile, amendments had cleared \$188,303 (42%). Mr. Sigurdson said that a second letter reminding committees of the need to respond and, if needed, amend was sent on July 3, 2014. Mr. Sigurdson stated that this year, the legislature had passed into law the Board's recommendation that all committees be required to respond to a reconciliation notice by filing an amendment or by providing a statement that the committee's report was accurate as filed. Under the new legislation, failure to respond may lead to a late filing fee of \$25 a day and a possible civil penalty. Mr. Sigurdson said that the second reconciliation letter made it clear that a financial penalty was possible if a response was not provided.

Website redevelopment

Mr. Goldsmith told members that he was working with MN.IT Services on a contract for the framework, structure, and layout of the new website but that MN.IT was unable to undertake the development of those parts of the website that would require database access, which includes all data search functionality. Mr. Goldsmith said that staff would begin work on a request for proposals for the development of the data access components of the website. Mr. Goldsmith reported that a contractor had completed an analysis of the health of the Board's network in June and that staff was working on another request for proposals for the implementation of the recommendations in that analysis. Mr. Goldsmith said that he expected the website to have a new look sometime this fall but developing the additional data access features sought by members would take more time.

Report concerning notices for constitutional office candidates who did not file for office

Mr. Goldsmith told members that candidates for constitutional office generally are required to file several reports in a year when the constitutional office is on the ballot. The first report was due on April 15, 2014; the second was due on June 16th. Three more reports are due in 2014: a pre-primary report, a 42-day pre-general-election report, and a 10-day pre-general election report. The 2014 year-end report is due on February 2, 2015. Mr. Goldsmith stated that Chapter 10A provides that candidates whose names will not be on the primary or general election ballots are not required to file the report due just before the primary election or the two pre-general election reports.

Mr. Goldsmith reported that notices for the April 15th report were sent to all constitutional office candidates because, at that time, staff did not know which candidates would be on any ballot in 2014. When notices were sent for the June 16th report, however, the filing period was over and some constitutional candidates had not filed for office. Mr. Goldsmith explained that although the names of these candidates could not be on the ballot for the primary or general election, Chapter 10A technically required them to file the June 16th report because there was no specific exception for that report in the law. Mr. Goldsmith stated that staff did not send notices for the June 16th report to constitutional office candidates who did not file for office and that staff would not seek reports from these candidates unless directed to do so by the Board. Mr. Goldsmith said that language to correct this issue would be added to the list of legislative recommendations that the Board will consider for 2015.

ENFORCEMENT REPORT

Discussion items

Reconsideration of late filing fee for 3/17/2014 Annual Principal Report - American Association of Advertising Agencies (4As)

Mr. Fisher told members that the American Association of Advertising Agencies (4As) had asked for reconsideration of a \$175 late filing fee imposed for the March 17, 2014, Report of Lobbyist Principal. In its request, 4As stated that the contact person registered with the Board

had changed employment and therefore had not received a forwarded notice until after the filing deadline had passed. The principal also maintained that it had terminated its relationship with its lobbyist on December 20, 2012, and had not been represented by a lobbyist in 2013. Mr. Fisher said that Board records showed that the lobbyist had terminated on December 31, 2013, after filing both required 2013 reports. Mr. Fisher anticipated that the lobbyist would amend the final 2012 report to show a termination date of December 31, 2012. Mr. Fisher said that if 4As did not have a lobbyist in 2013, it would not have been required to file a principal report for that year. Mr. Fisher reported that no previous waivers had been granted to 4As.

After discussion, the following motion was made:

Member Peterson's motion: To rescind the \$175 late fee imposed on the American Association of Advertising Agencies for the March 17, 2014, Report of Lobbyist Principal, pending the lobbyists amending their termination date to December 31, 2012.

Vote on motion: Unanimously passed.

Waiver requests

<u>Name of Candidate or Committee</u>	<u>Reason for Fine</u>	<u>Late Fee Amount</u>	<u>Civil Penalty Amount</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
Stonewall DFL ¹	1/31/14 YE	\$100	\$0	Treasurer was in a car accident and sustained injuries on January 30, 2014.	Peterson	To waive the late fee.	Unanimous
Independence Party of MN	6/16/14 2 nd Report	\$50	\$0	Treasurer is dealing with family and personal health issues.	Peterson	To waive the late fee.	Unanimous
Co-op PAC	6/16/14 2 nd Report	\$100	\$0	Does not recall receiving notice that report was due. Mailed reminder sent on June 4th to old address. Committee updated address with Board on June 11th.	Sande	To waive the late fee.	Unanimous
Hennepin County Deputies PAC	6/16/14 2 nd Report	\$100	\$0	Treasurer moved and changed address in CFR; but did not update address with Board. The treasurer therefore did not receive the notice. Address has since been updated with Board.	Sande	To waive the late fee.	Unanimous
Small Business MN PAC	6/16/14 2 nd Report	\$100	\$0	New treasurer took over after 1 st quarter report. Notice mailed to address currently listed for committee and treasurer on June 4th but addressed to old treasurer. Filed no change statement after receiving phone call.	Sande	To waive the late fee.	Unanimous

¹ Because the Stonewall DFL has already paid the late filing fee, granting the waiver request actually authorized reimbursement to the committee.

ZacPAC	6/16/14 2 nd Report	\$150	\$0	Personal issues caused a change in residence which led to missing the notice.	Sande	To lay the matter over to the next meeting.	Unanimous
Local 68	6/16/14 2 nd Report	\$200	\$0	New administrator introduced in week before deadline. Computer issue at deadline and family funeral contributed to late filing.	Peterson	To waive the late fee.	Unanimous
Canary Party of MN	1/31/14 YE; 4/14/14 1 st Quarter	\$425 for YE; \$1,000 for 1 st Quarter	\$0	Accountant was dealing with personal health issues at the end of 2013. A new accountant was hired which led to miscommunication for the 1 st quarter filing.	Wiener	To waive the \$425 late fee and reduce the \$1,000 late fee to \$175.	Unanimous
Housley for Senate Committee	Two 2012 24-hour notices	\$1,050	\$0	Misunderstanding over when 24-hour notices were submitted. Board records indicate that notices were filed late. In 2012, late fees for 24-hour notices for other committees were reduced to \$250.	Beck	To reduce the late fees to \$250.	Unanimous
Keegan Iversen State Auditor	6/16/14 2 nd Report	\$100	\$0	Opened checking account on May 2; no other May transactions. Contributions and expenditures in report were from June.	No motion		
1 st Judicial Dist. Rep. Committee	6/16/14 2 nd Report	\$100	\$0	Treasurer did not know a report was due and does not believe he received a notice. Notice mailed to address on file with Board on June 4th.	No motion		
Progressive Conservative PAC	6/16/14 2 nd Report	\$50	\$0	Beginning cash balance was off by \$.01. Discovered issue on evening of 6/16 and did not submit report until correct balance confirmed with Board the following day.	No motion		

Approval of agreements to resolve staff reviews

Freeborn County RPM

Mr. Goldsmith reported that the Freeborn County RPM's 2013 year-end report disclosed a prohibited corporate contribution. An inquiry into the contribution led to the discovery that the contribution was actually from two sources that chose to make contributions through the donation of grain. An individual was responsible for a \$100 contribution and S&S Farms, Inc. was responsible for the remaining \$1,000.03 contribution.

Political party units are prohibited from accepting corporate contributions. A corporate contribution also constitutes a contribution from an association not registered with the Board. Minnesota Statutes section 10A.27, subdivision 13, prohibits a party unit from accepting a contribution from an unregistered association that exceeds \$200 unless the contributor provides

a written disclosure statement as required by that section. The appropriate disclosure was not provided with the S&S Farms, Inc. contribution.

Mr Goldsmith reminded the Board that it had previously approved resolution of this matter through an informal staff review process rather than through a formal investigation. Mr. Goldsmith explained that the party unit and the corporate donor both agreed to proceed through the staff review process and that an agreement had been entered into with each entity.

Mr. Goldsmith stated that the agreement with Freeborn County RPM lists certain measures that the party unit will undertake to prevent future violations and imposes a \$1,000 civil penalty, \$750 of which will be stayed for a period of four years and then waived if no similar violation occurs during that period. A copy of the agreement is attached and made a part of these minutes.

S&S Farms, Inc.

As stated above, a review of the Freeborn County RPM 2013 year-end report showed that S&S Farms, Inc. had made a \$1,000.03 contribution to the party unit. Corporations are prohibited from making contributions to political party units under Minnesota Statutes section 211B.15, subdivision 2. A corporate contribution also constitutes a contribution from an association not registered with the Board. Minnesota Statutes section 10A.27, subdivision 13, prohibits an unregistered association from making a contribution to a party unit that exceeds \$200 unless the contributor provides a written disclosure statement as required by that section. The appropriate disclosure was not provided with the S&S Farms, Inc. contribution.

Mr. Goldsmith stated that the agreement with S&S Farms lists certain measures that the corporation will undertake to prevent future violations and imposes a \$250 civil penalty, which is stayed for a period of four years and then waived if no similar violation occurs during that period. A copy of the agreement is attached and made a part of these minutes.

After discussion, the following motion was made:

Member Peterson's motion: To approve the proposed agreements.

Vote on motion: Unanimously passed.

Request to terminate with a cash balance in excess of \$100

Mr. Fisher stated that the International Union of Painters & Allied Trades Political Action Together Political Committee (Reg. #30611) had asked to terminate its registration with the Board with an ending cash balance in excess of \$100. The committee's cash balance as of May 31, 2014, was \$721,264.99. Mr. Fisher said that the committee also was registered with the Federal Elections Commission and would continue to exist as a federally registered committee.

After discussion, the following motion was made:

Member Beck's motion: To approve the International Union of Painters & Allied Trades Political Action Together Political Committee's request to terminate its registration with a cash balance in excess of \$100.

Vote on motion: Unanimously passed.

Informational Items

A. Payment of a late filing fee for January 31, 2014, Report of Receipts and Expenditures:

Tom Huntley Volunteer Committee, \$250

B. Payment of a late filing fee for April 14, 2014, Report of Receipts and Expenditures:

Margaret (Kelliher) for Governor, \$300
Choice in Minn Health Care, \$200
IFAPAC, \$375

C. Payment of a late filing fee for March 17, 2014, Annual Report of Lobbyist Principal:

Allstate Ins. Co., \$75
Asurion Insurance Services, \$50
Creative Apparel, \$75
Dairies Federation of Minn, \$175
edX, \$75
Estee Lauder Inc, \$125
Jobs Now Coalition, \$375
Johnson Controls, \$175
Magellan Midstream, \$75
MicroSoft Corp, \$25
Minneapolis Municipal Retirement Assoc., \$100
Natl Electrical Contractors, \$200
NorthStar Problem Gambling Alliance, \$200
Northeast Service Coop, \$150
Persels & Associations, \$300
Police Officers Federation of Minneapolis, \$275
Strata Corp., \$25

D. Payment of a late filing fee for January 15, 2014, Lobbyist Disbursement Report:

Kelsey Johnson, Grocery Manufacturers Association, \$25
Mary Koenecke, GlaxoSmithKline, \$25

E. Payment of a late filing fee for June 16, 2014, Lobbyist Disbursement Report:

Maureen Hackett, Howling for Wolves, \$25
Ann Kaner-Roth, Minnesotans United, \$50
Chris Knopf, Fond du Lac Reservation, \$25
Dan Knuth, Automotive Recyclers, Bicycle Alliance of MN, MN Assn of Criminal Defense Lawyers, \$100
Roger Moe, Mall of America, \$25
Cap O'Rourke, Emerge Community Development, \$25
John Tuma, MN Assn of Christian Home Educators, MN Inter-County Assn, \$50

F. Payment of a civil penalty for exceeding the aggregate special source contribution limit:

Joe Hoppe Volunteer Committee, \$1,250. On October 2, 2012, the candidate entered into a conciliation agreement to remedy a violation resulting from accepting excess contributions from special sources totaling \$8,600. The 2012 limit on aggregate contributions from special sources for a state representative candidate was \$6,900. To meet the requirements of the conciliation agreement, the committee paid a \$1,700 civil penalty and returned a sufficient amount to special source contributors to bring the committee into compliance. During a routine Board reconciliation audit of the 2012 year-end Report of Receipts and Expenditures, three additional contributions from special sources were discovered. The additional \$1,250 in contributions increased the total amount of contributions from special sources accepted by the committee in 2012 to \$9,850. Representative Hoppe entered into a conciliation agreement on January 15, 2014.

RULEMAKING

Ms. Pope presented members with a memorandum describing the activities of the rules that is attached to and made a part of these minutes. Since the June 3, 2014, Board meeting, the rules committee had met twice and had held an unofficial public hearing which was attended by six people. Mr. Robert Hentges, on behalf of the Minnesota Government Relations Council (MGRC) was the only person who testified at the public hearing. The MGRC proposed some modifications to the rule draft but did not oppose the proposed rules. Ms. Pope reported that at its June 26, 2014, meeting, the rules committee adopted the June 26, 2014, draft of the proposed rules as amended as the committee's recommendation to the full Board.

Ms. Pope also presented members with a memorandum explaining the differences between the proposed rules as approved by the rules committee and the proposed rules as formatted by the

Revisor of Statutes on July 7, 2014, that is attached to and made a part of these minutes. The changes made by the Revisor were not substantive. The Revisor, however, had recommended that the Board make three additional changes to the proposed expedited rules. Mr. Goldsmith reported that the change to the language on lines 13.7 to 13.9 of the Revisor's draft was not substantive but improved the clarity of the proposed rules. The other changes involved the use of the word "sufficient" in the definitions of prima facie (line 4.16) and probable cause (line 6.4).

Finally, Ms. Pope presented members with a draft resolution authorizing Executive Director Goldsmith to take the actions necessary to publish the Notice of Intent to Adopt Expedited Rules. Because the draft resolution and the proposed rules in the Revisor's format had not been placed on the agenda at least seven days before the meeting, Chair Wiener asked if any members objected to consideration of these items. There were no objections.

After discussion, the following motions were made:

Member Beck's motion:	To adopt the following resolution:
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RESOLVED,

that Gary Goldsmith, the Executive Director of the Campaign Finance and Public Disclosure Board, is authorized and directed to sign and to give the Notice of the Board's Intent to Adopt Expedited Rules Without a Public Hearing in the Revisor of Statutes draft, file number RD4279, dated 07/07/14, identified as Proposed Expedited Rules Governing Complaints, Staff Reviews, Summary Proceedings, Audits, and Investigations, Minnesota Rules, chapter 4525, with any modifications approved by the Board. The Executive Director must give this notice to all persons who have registered their names with the Board for that purpose. The Executive Director must also publish the Notice in the State Register. Furthermore, the Executive Director is authorized and directed to do anything else needed to complete this Notice.

Vote on motion:	Unanimously passed.
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Member Sande's motion:	To accept the language in the Revisor's draft, file number RD4279, dated 07/07/14, with the modification to lines 13.7 through 13.9 described in the July 7, 2014, staff memo as the Board's proposed expedited rules.
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Vote on motion:	Unanimously passed.
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LEGAL COUNSEL'S REPORT

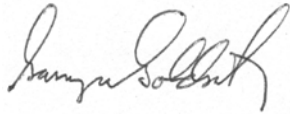
Mr. Hartshorn stated that he had one item to add to the provided report. A summons and complaint had been served on Greg Copeland by certified mail on July 3, 2014.

EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the executive session. Upon completion of the executive session, the regular session of the meeting was called back to order and the Chair had nothing to report into regular session.

OTHER BUSINESS

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



Gary Goldsmith
Executive Director

Attachments:

Memorandum regarding reconciliation issues

Agreement with Freeborn County RPM to resolve matter under staff review

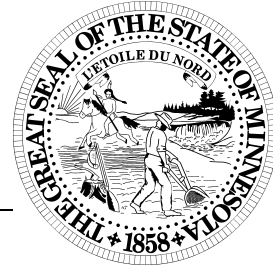
Agreement with S&S Farms, Inc. to resolve matter under staff review

July 1, 2014, memorandum regarding rules committee activities

July 7, 2014, memorandum regarding changes made by Revisor of Statutes to proposed expedited rules

Proposed expedited rules, Revisor's draft, file number RD4279, dated 07/07/14

Campaign Finance and Public Disclosure Board



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

DATE: July 1, 2014

TO: Board Members

FROM: Jeff Sigurdson
Assistant Director

TELEPHONE: 651-539-1189

SUBJECT: Update on Reconciliation of Contributions between Registered Committees

Staff Reconciliation of Contributions made in 2011

With the Board's staff now at full complement it has been easier to assign staff to work on the reconciliation of contributions made in prior reporting years. In particular Andrew Schons has, as his other duties allow, been working on 2011 contributions that do not reconcile. As of June 1, 2014, there were 237 transfers between registered committees totaling \$373,526 that did not reconcile. Mr. Schons has been able to resolve 113 transfers totaling \$209,905 from a manual inspection of reports and amendments already on file with the Board. This represents a 48% reduction in the number of records that did not reconcile and a 56% reduction in the dollar value of the records that did not reconcile.

Mr. Schons is continuing to work on 2011, and Dan Hegg (student intern) will be starting a similar review of the contributions that do not reconcile from 2010.

2013 Amendments Filed in Response to Reconciliation Letter

With Board approval staff is trying a different approach with the 2013 reconciliation. Staff has not made changes to the filed information to clear up obvious reporting errors (for example, reporting a contribution to a candidate on the schedule for expenditures). In the past staff would correct the data and send a change letter to the treasurer as notification of the change and an explanation as to why it was needed.

This approach had many problems; it was time consuming and shifted the responsibility for correcting reports to staff, if the committee did not change the record in the Campaign Finance Reporter software the correction would be overwritten when the next electronic report was filed, and perhaps most importantly, the treasurers were not learning how to correctly report the information as the same type of reporting errors were occurring again and again.

This year staff sent a different type of reconciliation notice to committees. The notice was more educational. It contained information on how a reporting error might create a reconciliation problem, how to identify and correct a reporting error in the software, and how to submit an amendment. The letter also provided staff contacts for additional help. But in the end, the committee was required to correct their error (if needed) and submit an amendment.

Initial results from this approach are encouraging, albeit incomplete. Of the initial \$441,497 in contributions that did not reconcile amendments have cleared \$188,303 (42%). A second letter reminding committees of the need to respond, and if needed amend, will be sent by the July 8, 2014, Board meeting.

This year the legislature passed into law the Board's recommendation that all committees must respond to a reconciliation notice by filing an amendment or by providing a statement that the committee's report is accurate as filed. Failure to do so may lead to a late filing fee of \$25 a day and a possible civil penalty. The second reconciliation letter will make clear the possibility of financial penalty if a response is not provided.

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

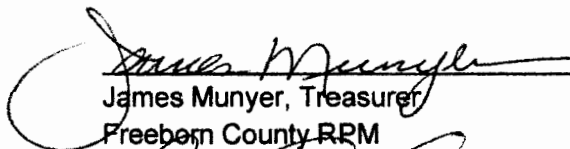
**AGREEMENT TO RESOLVE
MATTER UNDER STAFF REVIEW
#1004**

In the Matter of the Freeborn County RPM (Registration No. 20045);

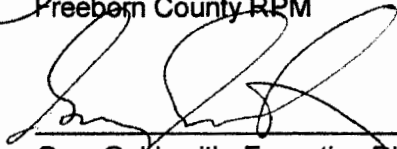
1. A routine staff review by the Minnesota Campaign Finance and Public Disclosure Board of the Freeborn County RPM's 2013 year-end Report of Receipts and Expenditures revealed a contribution which, as reported, constituted a violation of Minnesota Statutes, Chapter 10A.
2. The Freeborn County RPM reported that on July 9, 2013, it received a contribution from the Glenville Grain Co., LLC in the amount of \$1,100.03. An inquiry into the contribution led to the discovery that the contribution was actually from two sources that chose to make contributions through the donation of grain. An individual was responsible for a \$100 contribution, and S&S Farms, Inc. was responsible for the remaining \$1,000.03 contribution.
3. Corporations are prohibited from making contributions to political party units under Minnesota Statutes section 211B.15, subdivision 2. Political party units are prohibited from accepting corporate contributions under section 211B.13, subdivision 2. A corporate contribution also constitutes a contribution from an association not registered with the Board. Minnesota Statutes section 10A.27, subdivision 13 prohibits a party unit from accepting a contribution from an unregistered association that exceeds \$200 unless the contributor provides a written disclosure statement as required by that section. The appropriate disclosure was not provided with the S&S Farms, Inc. contribution.
4. The Freeborn County RPM returned the prohibited contribution to the Glenville Grain Co., LLC on April 7, 2014, and Glenville Grain Co., LLC returned the contribution to S&S Farms, Inc. on April 7, 2014.
5. To resolve this matter informally and to avoid these violations in the future the Freeborn County RPM agrees that it will:
 - a. Not accept any contributions from associations that are unregistered with the Board for a period of 4 years.
 - b. Send its treasurer and chair to attend the Board's in-person compliance training within 12 months of the date this agreement is approved by the Board.
6. The Freeborn County RPM agrees that the Board's acceptance of this agreement constitutes the imposition of a civil penalty in the amount of \$1,000 against the Freeborn County RPM for accepting a contribution that was prohibited by Minnesota Statutes section 211B.13,

subdivision 2 and without the disclosure required by Minnesota Statutes section 10A.27, subdivision 13. \$250 of the penalty is due within 30 days of the date the agreement is approved by the Board. \$750 of the penalty is, by the terms of this agreement, stayed for a period of four years from the date the agreement is approved by the Board. If the Freeborn County RPM violates Minnesota Statutes section 211B.13, subdivision 2 or section 10A.27, subdivision 13 within four years of the date the agreement is approved by the Board, the outstanding civil penalty is due immediately. If the Freeborn County RPM does not violate Minnesota Statutes section 211B.13, subdivision 2 or section 10A.27, subdivision 13 within four years of the date the agreement is approved by the Board, the outstanding civil penalty is waived.

7. If the Freeborn County RPM does 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.


James Munyer, Treasurer
Freeborn County RPM

Dated: 6/30/14


Gary Goldsmith, Executive Director
Campaign Finance and Public Disclosure Board

Dated: 7/7/14

Agreement approved by Board at meeting of 7-8, 2014


Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

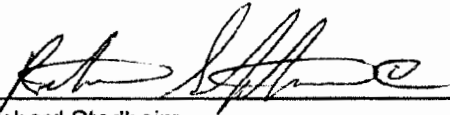
**AGREEMENT TO RESOLVE
MATTER UNDER STAFF REVIEW
#1005**

In the Matter of S&S Farms, Inc.;

1. A routine staff review by the Minnesota Campaign Finance and Public Disclosure Board of the Freeborn County RPM's 2013 year-end Report of Receipts and Expenditures revealed a contribution which, as reported, constituted a violation of Minnesota Statutes, Chapter 10A.
2. The Freeborn County RPM reported that on July 9, 2013, it received a contribution from the Glenville Grain Co., LLC in the amount of \$1,100.03. An inquiry into the contribution led to the discovery that the contribution was actually from two sources that chose to make contributions through the donation of grain. An individual was responsible for a \$100 contribution, and S&S Farms, Inc. was responsible for the remaining \$1,000.03 contribution.
3. Corporations are prohibited from making contributions to political party units under Minnesota Statutes section 211B.15, subdivision 2. S&S Farms, Inc. accidentally violated this prohibition because its owners did not understand the rules prohibiting such contributions.
4. The Freeborn County RPM returned the prohibited contribution to the Glenville Grain Co., LLC on April 7, 2014, and Glenville Grain Co., LLC returned the contribution to S&S Farms, Inc. on April 7, 2014.
5. To resolve this matter informally and to avoid these violations in the future S&S Farms, Inc. agrees that it will:
 - a. Refrain from making corporate political contributions, whether through the donation of grain or otherwise. S&S Farms, Inc. has already discussed the corporate contribution prohibition with its accountant and they both now understand that a distinction must be made between the corporation and its individual owners when making political contributions.
6. S&S Farms, Inc. agrees that the Board's acceptance of this agreement constitutes the imposition of a civil penalty in the amount of \$250 against S&S Farms, Inc. for making a contribution that was prohibited by Minnesota Statutes section 211B.15, subdivision 2. The penalty is, by the terms of this agreement, stayed for a period of four years from the date the agreement is approved by the Board. If S&S Farms, Inc. violates Minnesota Statutes section 211B.15, subdivision 2 within four years of the date the agreement is approved by the Board, the civil penalty is due immediately. If S&S Farms, Inc. does not violate Minnesota Statutes

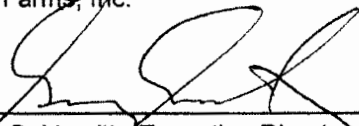
section 211B.15, subdivision 2 within four years of the date the agreement is approved by the Board, the civil penalty is waived.

7. If S&S Farms, Inc. does 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.



Richard Stadheim
S&S Farms, Inc.

Dated: 7-1-14



Gary Goldsmith, Executive Director
Campaign Finance and Public Disclosure Board

Dated: 7/7/14

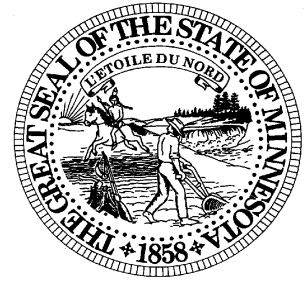
Agreement approved by Board at meeting of 7-8, 2014



Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: July 1, 2014

To: Board members

From: Jodi Pope, Legal/Management Analyst

Telephone: 651-539-1183

Re: Proposed expedited rules

The rules committee met twice during June. At its June 19, 2014, session, the committee held an unofficial public hearing, which was attended by six people. The Minnesota Government Relations Council (MGRC) was the only person or group that testified at the public hearing. The MGRC proposed some modifications to the rule draft but did not oppose the proposed rules.

At its June 26, 2014, meeting, the rules committee adopted the June 26, 2014, draft of the proposed rules as amended as the committee's recommendation to the full Board. The proposed rules as recommended are included in the Board materials. The proposed rules are in the format required by the Revisor of Statutes.

Three other documents are included in the Board materials. The first document is a draft explanation of the proposed rules. Although a Statement of Need and Reasonableness is not required for expedited rules, many legislators and members of the public asked for a brief explanation of the Board's proposed expedited rules. The second document is a notice of proposed rulemaking that is required by the Governor's Office. The third document is a draft notice of intent to adopt expedited rules.

If the Board approves the proposed expedited rules, the notice of intent to adopt expedited rules would be published in the State Register on July 28, 2014. The publication of the notice would trigger a 30-day comment period, which would end on August 27, 2014.

Attachments:

Proposed expedited rules

Draft explanation of rules

Draft notice to Governor's Office

Draft notice of intent to adopt expedited rules

Minnesota Campaign Finance and Public Disclosure Board Proposed Expedited Rules Governing Audits and Investigations as Recommended by Rules Committee

4525.0100 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2a. **Complaint.** "Complaint" means a written statement, including any attachments, that:

A. alleges that the subject named in the complaint has violated Chapter 10A or another statutory provision under the board's jurisdiction, and

B. complies with the requirements in part 4525.0200, subpart 2.

Subp. 3a. **Complainant.** "Complainant" means the filer of a complaint.

Subp. 3. **Contested case.** "Contested case" means a proceeding conducted under Minnesota Statutes chapter 14 before the board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a board hearing. "Contested case" includes a proceeding pursuant to a request for exemption from campaign reporting requirements under Minnesota Statutes, section 10A.20, subdivisions 8 and 10; a ~~proceeding to suspend a public official without pay for failure to file a statement of economic interest under Minnesota Statutes, section 10A.09, subdivision 8;~~ a hearing ordered by the board under part 4525.0900, subpart 2 concerning a complaint, investigation, or audit; and any other hearing which may be ordered by the board under parts 4525.0100 to 4525.1000 or which may be required by law.

"Contested case" does not include a board investigation or audit conducted under Minnesota Statutes, section 10A.02, subdivisions 9 and 10.

Subp. 5. {See repealer.}

Subp. 6. {See repealer.}

Subp. 6a. **Respondent.** "Respondent" means the subject of a complaint, a formal investigation, a formal audit, or a staff review or another form of summary proceeding.

4525.0150 GENERAL PROVISIONS

Subp 1. **Scope.** The provisions in this part apply to all formal investigations, formal audits, or staff reviews or other forms of summary proceedings conducted under Minnesota Statutes chapter 10A and Minnesota Rules chapter 4525.

Subp.2. **Notice, where sent.** Whenever notice is required, if a respondent is registered with the board, notices must be sent by electronic and United States mail to the most recent addresses that the respondent provided in a registration statement filed with the board.

Subp. 3 **Opportunity to be heard.** When a provision in Minnesota Statutes chapter 10A or Minnesota Rules chapter 4525 provides that a complainant or a respondent has an opportunity to be heard by the board, the complainant or respondent must be given an

opportunity to appear in person at a board meeting before the board makes a determination on the matter. The complainant or respondent is not required to appear before the board.

A complainant or respondent who has an opportunity to be heard may submit a written statement to the board in addition to or in lieu of an appearance before the board. A written statement under this part must be submitted at least ten business days before the board meeting at which the matter will be heard. The executive director must provide any submitted statement to the board before the board makes a determination on the matter.

The opportunity to be heard does not include the right to call witnesses or to question opposing parties, board members, or board staff.

The board may set a time limit for statements to the board when necessary for the efficient operation of the meeting.

When notice of the opportunity to be heard has been sent as required in subpart 2, the failure to appear in person or in writing at the noticed meeting constitutes a waiver of the opportunity to be heard at that meeting.

Subp. 4. **Continuance.** The board may continue a matter to its next meeting if

A. the parties agree;

B. the investigation is not complete;

C. the respondent shows good cause for the continuance; or

D. the delay is necessary to equitably resolve the matter.

Subp. 5. **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 a formal investigation or formal audit in any matter or to direct the executive director to initiate a staff review or another form of summary proceeding of any matter.

4525.0200 COMPLAINTS OF VIOLATIONS.

Subpart 1. **Who may complain.** A person who believes a violation of Minnesota Statutes, chapter 10A, or another provision of Minnesota Statutes placed under the board's jurisdiction by Minnesota Statutes, section 10A.02, subdivision 11, or rules of the board has occurred may submit a written complaint to the board.

Subp. 2. **Form.** Complaints must be submitted in writing. ~~The complaint may be submitted on a form provided by the board, or may be typed or handwritten.~~ The name and address of the complainant must be ~~typewritten or hand-printed~~ included on the complaint and it must be signed by the complainant or an individual authorized to act on behalf of the complainant. A complainant shall list the alleged violator and the alleged violator's address if known by the complainant and describe the complainant's knowledge of the alleged violation. Any evidentiary material should be submitted with the complaint. Complaints are not available for public inspection or copying until after the board makes a finding. ~~No investigations are required if a complaint is frivolous on its face, illegible, too indefinite, does not identify the violator, or is unsigned by the complainant.~~

Subp. 4. **Oath. Testimony** Evidence given in a meeting conducted by the board under this chapter must be under oath. Arguments made to the board that do not themselves constitute evidence are not required to be under oath.

[For text of subparts 5 and 6, see M.R.]

4525.0210 DETERMINATIONS PRIOR TO FORMAL INVESTIGATION

Subp. 1. **Prima facie violation determination.** A prima facie determination is a determination that a complaint is sufficient to allege a violation of Chapter 10A or another provision of Minnesota Statutes placed under the Board's jurisdiction by section 10A.02, subdivision 11.

Subp. 2. **Preparation for prima facie determination.** After a complaint is filed, the executive director must follow the notice provisions in Minnesota Statutes section 10A.02, subdivision 11, with regard to the respondent's right to submit written arguments addressing the prima facie determination. The notice must provide that the respondent is not permitted to contact any board member directly regarding the complaint or the prima facie determination.

Upon the expiration of the time provided for the respondent to submit written argument, the executive director must submit the matter to the board member who will make the determination or to all board members if the full board will make the determination. The submission must include the complaint, any response submitted by the respondent, and an analysis of the allegations of the complaint and the violations that it alleges.

Subp 3. **Making the prima facie determination.** In determining whether a complaint states a prima facie violation, any evidence outside the complaint and its attachments may not be considered. Arguments of the respondent, which are not themselves evidence, must be considered.

If a finding is made that a complaint does not state a prima facie violation, the complaint must be dismissed without prejudice. The dismissal must be ordered by the board member making the determination or by the full board if the full board makes the determination. The order must be in writing and must indicate why the complaint does not state a prima facie violation.

If a finding is made that a complaint states a prima facie violation, the board chair must schedule the complaint for a probable cause determination.

Subp. 4. **Action after prima facie violation determination.** The executive director must promptly notify the complainant and the respondent of the prima facie determination. The notice must include a copy of the order making the prima facie determination.

If a determination is made that a complaint states a prima facie violation, the notice also must include the date of the meeting at which the board will make a probable cause determination regarding the complaint and a statement that the complainant and the respondent have the opportunity to be heard before the board makes the probable cause determination.

Subp. 5. **Probable cause determination.** In determining whether probable cause exists, the board must consider the allegations of the complaint and the information and

arguments in any statement submitted by the complainant or respondent. The board must also consider any inferences necessary to a probable cause determination that could be drawn about the matter by a reasonable person.

To find probable cause to believe that a violation has occurred, the board must conclude that the complaint presents a sufficient basis to order a formal investigation or a staff review.

Subp. 6. **Action after probable cause not found.** If the board finds that probable cause does not exist to believe that a violation has occurred, the board must order that the complaint be dismissed without prejudice. The order must be in writing and must indicate why probable cause does not exist to believe that a violation has occurred.

The executive director must promptly notify the complainant and the respondent of the board's determination. The notice must include a copy of the order dismissing the complaint for lack of probable cause.

Subp. 7. **Action after probable cause found.** If the board finds that probable cause exists to believe that a violation has occurred, the board then must determine whether the alleged violation warrants a formal investigation.

When making this determination, 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; and any other similar factor necessary to decide whether the alleged violation warrants a formal investigation.

If the board orders a formal investigation, the order must be in writing and must describe the possible violations to be investigated, the scope of the investigation, and the discovery methods available for use by the board in the investigation.

The executive director must promptly notify the complainant and the respondent that the board has found that probable cause exists to believe that a violation has occurred, that the board has determined that the alleged violation warrants a formal investigation, and that the board has ordered a formal investigation into the matter.

The notice to the respondent also must:

A. include a copy of the probable cause order;

B. explain how the investigation is expected to proceed and what discovery methods are expected to be used;

C. explain the respondent's rights at each stage of the investigation, including the right to provide a written response and the right to counsel, and

D. state that the respondent will be given an opportunity to be heard by the board prior to the board's determination as to whether any violation occurred.

Subp. 8. **Action if formal investigation not ordered.** If the board finds that probable cause exists to believe that a violation has occurred, but does not order a formal investigation under subpart 7, the board must either dismiss the matter without prejudice or offer the

respondent the option of resolving the matter through a staff review under part 4525.0320. If the board offers the respondent the option of resolving the matter through a staff review and that offer is not accepted, the board must order a formal investigation.

In making the determination of whether to dismiss the complaint or offer resolution through a staff review, 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 availability of board resources, and any other similar factor necessary to decide whether to proceed with a staff review.

An order dismissing a matter must be in writing and must indicate why the matter was dismissed.

The executive director must promptly notify the complainant and the respondent of the board's determination. The notice must include a copy of the order.

4525.0220 SUMMARY PROCEEDINGS

Subp. 1. **Summary Proceeding.** A summary proceeding is an action other than a complete formal investigation that is undertaken to resolve a matter or a part of a matter. A staff review under part 4525.0320 is one form of summary proceeding.

Subp. 2. **Request by respondent.** At any time, a respondent may request that a matter or a part of a matter be resolved using a summary proceeding. The request must be in writing and must:

A. specify the issues the respondent is seeking to resolve through the summary proceeding,

B. explain why those issues are suitable for the summary proceeding, and

C. explain how the proposed summary proceeding would be undertaken.

Subp. 3. **Consideration of request by board.** Upon receipt of a request for a summary proceeding, the executive director must submit the request to the board. The request must be considered by the board at its next meeting that occurs at least ten days after the request was received.

The board is not required to agree to a request for a summary proceeding. If the board modifies the respondent's request for a summary proceeding, the board must obtain the respondent's agreement to the modifications before undertaking the summary proceeding.

4525.0320 STAFF REVIEW

Subp. 1. **Staff review.** In a staff review, the executive director reviews information and works informally with a respondent to determine whether a violation has occurred and to determine how any identified violation should be resolved.

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 information provided on a report filed with the board suggests that there has been a violation of chapter 10A or another provision of Minnesota Statutes placed under the board's jurisdiction pursuant to section 10A.02, subdivision 11, or of Minnesota Rules chapters 4501 through 4525.

Subp. 3. **Resolution of matter under staff review by amendment.** If a matter under staff review is resolved by the respondent amending a report, the matter under staff review must be closed by the executive director. The executive director must prepare a brief summary of the matter and file the summary with the board's records related to the respondent.

Subp. 4. **Resolution of matter under staff review by agreement.** Subject to board approval under part 4525.0330, a respondent may agree to resolve a matter under staff review by agreement. The agreement must describe any actions that the respondent has agreed to take to remedy the violation or to prevent similar violations in the future. The agreement must also include the amount of any civil penalty that the respondent has agreed to pay and any other provisions to which the respondent has agreed.

4525.0330 SUBMISSION TO BOARD: MATTER UNDER STAFF REVIEW RESOLVED BY AGREEMENT.

Every matter under staff review that is resolved by agreement under part 4525.0320 must be presented to the board at a public meeting as part of the board's consent agenda or as a separate item on the regular agenda. Upon the request of one board member, any agreement resolving a matter under staff review must be moved from the consent agenda to the regular agenda.

The respondent must be given an opportunity to be heard by the board prior to the board's decision regarding the agreement.

The executive director must send notice of the meeting to the respondent. The notice must be sent not later than the time that the agreement is provided to the board and must include a copy of the agreement. 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 agreement.

An agreement made under part 4525.0320 to resolve a matter under staff review is final only after the board approves the agreement.

If the board does not approve an agreement to resolve a matter under staff review, the board must lay the matter over until its next meeting and:

- A. provide guidance and direct the executive director to continue the staff review, or
- B. direct the executive director to prepare the matter for resolution by the board without an agreement pursuant to part 4525.0340.

If an agreement proposed under this subpart is not approved by the board, any admissions by the respondent and any remedial steps taken or agreed to by the respondent are not evidence of a violation in any subsequent proceeding.

4525.0340 SUBMISSION TO BOARD; MATTER NOT RESOLVED BY AGREEMENT.

Subp. 1. **Submission to board.** If a matter under staff review is not resolved by agreement under parts 4525.0320 and 4525.0330, the executive director must submit the matter to the board under this part.

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, must be submitted to the board under this part.

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. If the submission includes a recommendation for a formal investigation of the matter, the submission must be made at a meeting closed to the public. In all other cases, the submission must be made at a public meeting.

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.

When it receives a submission under this part, the board must take one of the following actions:

A. provide guidance and direct the executive director to continue the staff review,

B. dismiss the matter without prejudice,

C. order a formal investigation of the matter, or

D. order the respondent to take the actions required to remedy the subject violation and impose a civil penalty if provided for by statute.

The board must consider the evidence in the executive director's submission and the information and arguments in any statement submitted by the respondent.

In making its determination, 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; and any other similar factor necessary to decide whether the matter under review warrants a formal investigation.

Unless the board directs the executive director to continue the staff review, the board's determination must be made in writing. The executive director must promptly notify the respondent of the board's determination.

Subp. 2. **Formal investigation ordered.** An order for a formal investigation must describe the alleged violations to be investigated, the scope of the investigation, and the discovery methods available for use by the board in the investigation.

When the board orders a formal investigation, the executive director must promptly notify the respondent that the board has ordered a formal investigation into the matter.

The notice to the respondent must:

A. include a copy of the order initiating the investigation;

B. explain how the investigation is expected to proceed and what discovery methods are expected to be used;

C. explain the respondent's rights at each stage of the investigation, including the right to provide a written response and the right to counsel, and

D. state that the respondent will be given an opportunity to be heard by the board prior to the board's determination as to whether any violation occurred.

4525.0500 INVESTIGATIONS AND AUDITS; GENERAL PROVISIONS.

Subpart 1. **No complaint.** The board may undertake investigations or audits with respect to statements and reports which are filed or should have been filed under Minnesota Statutes, chapter 10A, although no complaint has been filed. Any decision as to whether an investigation should be undertaken must be made at a closed meeting of the board.

Subp. 2. {See repealer.}

[For text of subpart 3, see M.R.]

Subp. 5. **Board meetings.** Board meetings related to an investigation or audit must be conducted in accordance with part 4525.0200, subparts 4 to 6 5. At every board meeting, the executive director must report on the status of each active formal investigation and formal audit.

Subp. 6. **Subpoenas.** The board may issue subpoenas when necessary to advance an investigation or audit. The board may not issue a subpoena for the production of documents or witness testimony until a respondent has had at least 14 days to respond to a written request for the documents or testimony. When deciding whether to issue a subpoena, the board must consider the level of staff resources in taking witness testimony and conducting discovery.

Subp. 7. **Respondent submission.** In any investigation, audit, or staff review or other summary proceeding, the respondent may supply additional information, including sworn testimony, not requested by the board. The executive director must provide the information submitted by the respondent to the board in advance of the meeting at which the board will consider the matter.

4525.0550 FORMAL AUDITS

Subp. 1. **Formal audit.** The purpose of a formal audit is to ensure that all information included in the report or statement being audited is accurately reported. The fact that the board is conducting a formal audit does not imply that the subject of the audit has violated any statute.

Subp. 2. **Respondent's rights.** The executive director must send a draft audit report to the respondent before the board considers adoption of the final audit report. The respondent has the right to respond in writing to the findings in the draft audit report. The respondent must be given an opportunity to be heard by the board prior to the board's decision regarding the draft audit report.

Subp. 3. **Final audit report.** At the conclusion of a formal audit, the board must issue a final audit report. The final report must identify the subject of the audit and must include the following:

- A. the name of the primary board employee responsible for conducting the audit,
- B. a description of the scope of the audit,
- C. any findings resulting from the audit,
- D. a description of any responses to the findings that the subject of the audit provides,
- E. a description of the manner in which any findings were resolved.

The final audit report may not include any information that is classified as confidential under the provisions of chapter 10A related to audits.

REPEALER. Minnesota Rules, part 4525.0100, subparts 5 and 6, and part 4525.0500, subpart 2, are repealed.

Minnesota Campaign Finance and Public Disclosure Board

Draft explanation of proposed expedited rules governing audit and investigation procedures, Minnesota Rules chapter 4525; Revisor's ID Number R-04279

INTRODUCTION

The Campaign Finance and Public Disclosure Board is charged with the administration of Minnesota Statutes Chapter 10A and three provisions in Chapter 211B that have been brought under the Board's jurisdiction for state-level elections. The Board's four major programs are campaign finance registration and disclosure, public subsidy administration, lobbyist registration and disclosure, and economic interest disclosure by public officials.

The Board has the authority to initiate audits and investigations related to the requirements of Chapter 10A and the three provisions in Chapter 211B that are under the Board's jurisdiction. Until the past legislative session, Minnesota Statutes section 10A.02, subdivision 11, paragraph (a), required the Board to conduct a full investigation of every violation alleged in a complaint regardless of the amount or seriousness of the alleged violation. Under Chapter 10A, the Board is required to make findings and conclusions and to issue an order in every investigation.

Board meetings must be open to the public under the Open Meeting Law, Minnesota Statutes Chapter 13D unless otherwise provided by statute. In addition, under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, all government data collected by the Board is public unless another statute makes the data not public. Pursuant to Minnesota Statutes section 10A.02, subdivision 11, paragraph (d), Board audits and investigations are confidential until the Board issues findings, conclusions, and orders or conciliation agreements.

In 2014, the legislature repealed the directive to the Board to investigate every complaint and gave the Board more flexibility to allocate its investigatory resources to match the seriousness of an alleged violation. The legislature also added additional requirements to the process used by the Board to investigate complaints. The legislature directed the Board to adopt rules governing its audit and investigation procedures using the expedited rulemaking process.

On April 22, 2014, the Board chair appointed a rules committee to draft the proposed rules. The committee met four times between April 28, 2014, and June 26, 2014. The committee also held a public hearing on the proposed rules on June 19, 2014. The Board approved the proposed rules at its July 8, 2014, meeting. The anticipated effective date for the proposed rules is December 1, 2014, and the rules would be effective for audits, investigations, and staff reviews and other summary proceedings initiated after that date.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Jodi Pope at the Campaign Finance and Public Disclosure Board, 190 Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155-4114; (651) 539-1183 (telephone); (651) 539-1196 (fax); (800) 357-4114 (toll free fax); jodi.pope@state.mn.us. TTY users may call (800) 627-3529 and ask for (651) 539-1183.

STATUTORY AUTHORITY

The Board's general statutory authority to adopt rules is in Minnesota Statutes section 10A.02, subdivision 13. This source of statutory authority was adopted and effective before January 1,

1996. It has not been substantively revised by the legislature since then. Minnesota Statutes section 14.125 therefore does not apply.

The statutory authority to adopt these proposed rules under the expedited rulemaking process is in 2014 Minnesota Laws, chapter 309, section 6, paragraph (b) (to be codified at Minn. Stat. § 10A.02, subd. 10), which provides:

The board shall issue rules, using the expedited rulemaking process in section 14.389, setting forth procedures to be followed for all audits and investigations conducted by the board under this chapter and other provisions under the board's jurisdiction pursuant to subdivision 11. The rules regarding the board's investigative procedure shall set forth:

- (1) the process for the board initiating and overseeing an investigation;
- (2) when summary proceedings may be available;
- (3) dedication of staff resources in taking witness testimony and conducting discovery;
- (4) parties' rights and opportunities to be heard by the board; and
- (5) board hearings and disposition of complaints, audits, and investigations.

Under these statutes, the Board has the necessary statutory authority to adopt the proposed rules.

RULE-BY-RULE ANALYSIS

Part 4525.0100 defines the terms “complaint,” “complainant,” and “respondent;” repeals the definitions of the terms “party” and “person;” and amends the definition of “contested case.”

The changes to part 4525.0100 are within the statutory directive given to the Board because all of the terms affected are integral to the audit and investigation process.

Although the term “parties” is used in the statutory rulemaking directive, this single term has been replaced in the proposed rules with new, more precise terms that specifically refer to each participant in the audit and investigation process. Further, the use of the term “party” in the rules sometimes created confusion because in the Board’s regulated community, this term is more commonly understood to mean a political party rather than a party to an investigation. In addition, part of the definition of “party” was incorrect because the Minnesota Supreme Court has held that the complainant is not a party in a contested case under Chapter 10A. See *In re Complaint against the Sandy Pappas Volunteer Comm.*, 488 N.W.2d 795, 798-799 (Minn. 1992) (complainant lacked standing to appeal Board dismissal of complaint).

Similarly, the term “person” has been replaced by more precise terms that specifically refer to each participant in the audit and investigation process. In addition, the term “person” is defined in Minnesota Statutes section 10A.01, subdivision 26a, and the statutory definition is different from the rule definition. This contradiction provides further justification for repealing the rule definition of “person.”

Finally, clarifying that Minnesota Statutes Chapter 14 applies to contested cases arising out of audits and investigations brings the rules into conformity with an Office of Administrative Hearings decision on this matter issued in 2005. See *In re Petition for Review of the Campaign Finance and Public Disclosure Board Notice and Order for Hearing regarding the Matter of 21st Century Democrats (National Association) and 21st Century Democrats (Minnesota Committee)*, OAH Docket No. 11-4450-16542-2 (June 30, 2005) (holding that “contested case” in Minn. R. 4525.0100, subpart 3, meant case held under Minnesota Statutes Chapter 14 before Office of

Administrative Hearings). In addition, although the Board can investigate a public official's failure to file an economic interest statement, the Board can no longer suspend the official if the investigation were to show that the official had failed to file. See 2014 Minn. Laws ch. 309, § 25 (repealing Board's authority to suspend public official who has not filed economic interest statement).

Part 4525.0150 contains general provisions that apply to all audits and investigations, including staff reviews and other summary proceedings. It specifies where the Board must send notices and the circumstances under which the Board is permitted to continue a matter to its next meeting. The part also clarifies what rights are included when a statute or rule gives someone the opportunity to be heard by the Board.

Reading the provisions in the new legislation that grant the opportunity to be heard and reviewing the statements made when the legislature adopted these provisions shows that the legislature intended for this phrase to mean a chance to speak directly to the Board rather than the right to conduct an evidentiary hearing before the Board. Enacting this legislative intent into rule ensures that it is enforceable and makes complainants and respondents aware of what the opportunity to be heard entails.

Part 4525.0200 concerns complaints filed with the Board. The minor amendments to this part improve its clarity by specifying matters implicit in statute or rule. For example, in 2013, the Board was granted jurisdiction over three provisions in Minnesota Statutes Chapter 211B for state-level elections. The Board's jurisdiction includes the right to accept and investigate complaints alleging violations of those three provisions. Adding a specific reference to these other statutory provisions to subpart 1 ensures that the rule lists every provision under the Board's jurisdiction. Similarly, the amendments to subpart 4 clarify that someone taking advantage of the opportunity to be heard by making an argument to the Board does not need to argue under oath because arguments are not evidence.

Part 4525.0210 concerns the determinations that the Board must make before undertaking the formal investigation of a complaint. Most of the rule provisions are derived directly from the new language added to Minnesota Statutes section 10A.02, subdivision 11, paragraph (a), in 2014. The new law provides a definition of prima facie determination, that the Board must determine whether a complaint states a prima facie violation before proceeding, that the Board must determine whether probable cause exists to believe that a violation warranting a formal investigation has occurred, the time frames for making the prima facie and probable cause determinations, who must make these determinations, that the determinations must be in writing, and when a party has an opportunity to be heard.

In addition to implementing the new statutory requirements, part 4525.0210 also includes several provisions intended to clarify and protect a respondent's due process rights. The part specifies when notice must be sent to a respondent and what information must be included in the notice. The rule also clarifies what information the Board can consider when making the prima facie and probable cause decisions. Finally, the rule specifies what the Board must do if it finds that a violation has occurred but does not order a formal investigation.

Part 4525.0220 implements the legislative directive to specify when summary proceedings are available to resolve a matter. The part allows a respondent to propose a summary proceeding at any time. Because the Board anticipates that each request for a summary proceeding will be unique, the part does not attempt to list the types of summary proceedings available. Instead, the part creates flexibility by giving the Board and the respondent the opportunity to propose actions that fit the matter and that are agreeable to both sides.

Part 4525.0320 describes one type of summary proceeding, the staff review. This part states that a staff review is an informal process involving the respondent and the executive director that can be used to determine whether a violation has occurred and, if so, how best to resolve the violation. The Board can direct a staff review into a matter. The executive director also must initiate a staff review when information submitted on a report filed with the Board suggests that there has been a violation of the campaign finance laws. Part 4525.0320 describes two methods for resolving staff reviews: by amendment and by agreement.

In general, the Minnesota Government Data Practices Act makes all matters before the Board public unless another statute makes a matter not public. Minn. Stat. § 13.03, subd. 1. Minnesota Statutes section 10A.02, subdivision 11, paragraph (d), provides that “[a] hearing before the Board or action of the Board concerning a complaint or investigation other than findings, conclusions, and orders or a conciliation agreement is confidential.” Until the Board makes public findings in an investigation or enters a conciliation agreement, information about the investigation cannot be disclosed except as required to carry out the investigation or to take action in the matter. *Id.* A conciliation agreement is a special type of agreement that must be used to resolve excess spending and excess contribution violations. Minn. Stat. § 10A.28, subd. 3.

Because a staff review is not a formal investigation, it does not have the statutory confidentiality protections reserved for audits and investigations. Board discussions related to staff reviews will be held in open meetings and government data collected in staff reviews will be public data unless otherwise classified by the Data Practices Act.

Part 4525.0330 explains how the Board will handle matters under staff review that are resolved by agreement. This part specifies that no agreement is final until approved by the Board. The part also contains several provisions that protect a respondent’s due process rights in a matter under staff review such as notice provisions, an opportunity to be heard by the Board, and the right to a continuance if the Board does not approve the agreement. The rule also protects respondents by specifying that any admissions made or remedial steps taken cannot be used as evidence against the respondent if the Board rejects the agreement.

Part 4525.0330 clarifies that a matter under staff review that is resolved by agreement is public. Under the proposed rules, a matter under staff review would not be an investigation and would not result in findings and conclusions and the issuance of an order. In addition, an agreement resolving a matter under staff review would not be a conciliation agreement. There is no other provision in Minnesota Statutes that would make a matter under staff review not public. Consequently, matters under staff review and the agreements resolving them must be public.

Part 4525.0340 explains how the Board will resolve matters under staff review that are not resolved by agreement. Because the Board has the authority to investigate any matter on its own initiative, there also could be situations where, absent a staff review or complaint, the Board would order a formal investigation on its own or be asked to do so by the executive director. Part 4525.0340 specifies how the Board must handle these decisions. The part again contains provisions to protect the respondent’s due process rights, such as notice provisions, an opportunity to be heard by the Board, a list of the type of factors that the Board must consider when making its determination, and a description of the information that must be in the Board’s determination order.

To comply with the data privacy provisions in Minnesota Statutes section 10A.02, subdivision 11, paragraph (d), the part specifies that if the matter submitted to the Board includes a

recommendation for a formal investigation, the matter must be considered in a meeting closed to the public.

Part 4525.0500 contains current and new rule provisions that apply generally to all audits and investigations. Subpart 2 relating to the conduct of investigations is being repealed because it has been superseded by the requirements in Minnesota Statutes section 10A.02, subdivision 11, paragraph (a), and the proposed rule parts. A reporting requirement is being added to subpart 5 to ensure that the Board is actively involved in overseeing investigations and audits.

Subpart 6 concerning subpoenas fulfills the legislative directive to promulgate rules governing the use of staff resources in taking witness testimony and conducting discovery. Subpart 7 specifies that respondents have the right to submit material to the Board in any audit, investigation or staff review or other summary proceeding.

Part 4525.0550 concerns formal audits conducted by the Board. The rule clarifies that a Board audit does not imply that the respondent has violated the campaign finance laws. The rule specifies a respondent's due process rights in an audit, including the right to respond to any findings in the audit report and an opportunity to be heard. The provisions in subpart 3 are taken from Minnesota Statutes section 10A.02, subpart 10, and section 10A.09, subpart 10.

CONCLUSION

Based on the foregoing, the proposed rules are within the statutory authority granted to the Board and are both needed and reasonable.

July 8, 2014

Deanna Wiener
Chair

**Draft 2014 Administrative Rule
Preliminary Proposal Form**

Revisor's ID Number: R-04279

Submitting Agency: Campaign Finance and Public Disclosure Board Date: 7/8/2014
Jodi Pope
 Rule Contact: Legal/Management Analyst
 E-mail Address: Jodi.pope@state.mn.us Phone #: (651) 539-1183

Type of Rule (must be one of the following):

Exempt Expedited Permanent

Title: (Short descriptive title)	Rules governing procedures for investigations and audits
Chapter Number(s):	4525
Supporters, opponents and possible controversies:	No controversy foreseen. The Board chair appointed a rules committee to draft the rules. The committee met four times in public session in April, May, and June 2014 and held an unofficial public hearing on June 19, 2014. The Minnesota Government Relations Council (MGRC) was the only person or group that testified at the public hearing. The MGRC proposed some modifications to the rule draft but did not oppose the rules. It is possible that the MGRC could have additional comments as the process continues.
Agency impact:	Most of the agency impact will come from the statutory provisions adding specific requirements to the Board's investigation and audit processes. Board members and staff will some spend additional time complying with new procedures contained solely in the proposed rules and notifying regulated parties of the new procedures. But the informal review process created in the rule arguably will offset that additional time because informal resolutions typically take less resources than formal investigations. Neither the new statutory requirements nor the rules implementing them will have a recognizable fiscal impact on the agency.
If Exempt or Expedited rule process is being used please explain why:	The legislature directed the Board to adopt rules using the expedited process. See 2014 Minn. Laws, ch. 309, § 6.

<p>Describe the need for the rule and provide background information:</p>	<p>The Board has the authority to initiate audits and investigations related to the requirements of Chapter 10A and the three provisions in Chapter 211B that are under the Board’s jurisdiction. Until the past legislative session, Minnesota Statutes section 10A.02, subdivision 11, required the Board to conduct a full investigation of every violation alleged in a complaint regardless of the amount or seriousness of the alleged violation. Under Chapter 10A, the Board is required to make findings and conclusions and to issue an order in every investigation.</p> <p>In 2014, the legislature repealed the directive to the Board to investigate every complaint and gave the Board more flexibility to allocate its investigatory resources to match the seriousness of an alleged violation. The legislature also added additional requirements to the process used by the Board to investigate complaints. The legislature directed the Board to adopt rules governing its audit and investigation procedures using the expedited rulemaking process.</p> <p>In addition to implementing the new legislative procedures related to complaints, the proposed rules establish less formal processes that can be used to review less serious violations and situations where the magnitude of a violation is not yet known. The proposed rules also protect individual due process rights by specifying the procedures that the Board will use to conduct all audits and investigations.</p>
<p>Rulemaking authority and other relevant statutes:</p>	<p>Minn. Stat. § 10A.02, subds. 10 and 13.</p>

Fiscal Impact:

Yes

No

Undetermined

Chair's Signature

Date

July 8, 2014

*** THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE***

I have reviewed the above information and approved the concept of this administrative rule.

Governor's Policy Advisor

Date

Minnesota Campaign Finance and Public Disclosure Board

DRAFT NOTICE OF INTENT TO ADOPT EXPEDITED RULES WITHOUT A PUBLIC HEARING

Proposed Amendment to Rules Governing Board Audit and Investigation Procedures, Minnesota Rules, chapter 4525; Revisor's ID Number R-04279

Introduction. The Minnesota Campaign Finance and Public Disclosure Board intends to adopt rules under the expedited rulemaking process set forth in the rules of the Office of Administrative Hearings, Minnesota Rules part 1400.2410, and the Administrative Procedure Act, Minnesota Statutes section 14.389. You may submit written comments on the proposed expedited rules until August 27, 2014.

Board Contact Person. You must submit comments or questions on the rules to Jodi Pope at the Minnesota Campaign Finance and Public Disclosure Board; 190 Centennial Office Building; 658 Cedar Street; St. Paul, MN 55155-1603; (651) 539-1183; FAX (651) 539-1196 or (800) 357-4114. You may submit email comments or questions to jodi.pope@state.mn.us or CFB.Rules@state.mn.us. TTY users may call the Board through the Minnesota Relay Service at (800) 627-3529.

Subject of the Expedited Rules and Statutory Authority. The proposed expedited rules are about procedures used by the Board for audits and investigations. Until this year, Minnesota Statutes section 10A.02, subdivision 11, required the Board to conduct a full investigation of every violation alleged in a complaint regardless of the amount or seriousness of the alleged violation. In 2014, the legislature repealed this mandatory directive and gave the Board more flexibility to allocate its investigatory resources to match the seriousness of an alleged violation. The legislature directed the Board to use the expedited process to adopt rules setting forth 1) the processes that the Board would use to initiate and oversee investigations; 2) when summary proceedings would be available; 3) the dedication of staff resources in taking witness testimony and conducting discovery; 4) the parties' rights and opportunities to be heard by the board; and 5) board hearings and dispositions of complaints, audits, and investigations. Minn. Stat. § 10A.02, subd. 10 (b). The proposed expedited rules include provisions related to all five of these legislative directives.

The statutory authority to adopt the rules is Minnesota Statutes section 10A.02, subdivisions 10 and 13. The statutory authority to adopt the rules under the expedited rulemaking process is 2014 Minnesota Laws, chapter 309, section 6 (to be codified at Minn. Stat. § 10A.02, subd. 10 (b)). A copy of the proposed rules is published in the State Register and attached to this notice as mailed. The proposed expedited rules also may be viewed at: www.cfboard.state.mn.us.

Comments. You have until 4:30 p.m. on Wednesday, August 27, 2014, to submit written comment in support of or in opposition to the proposed expedited rules and any part or subpart of the rules. Your comment must be in writing and received by the Board contact person by the due date. The Board encourages comment. Your comment should identify the portion of the proposed expedited rules addressed and the reason for the comment. In addition, you are encouraged to

propose any change desired. You must also make any comments on the legality of the proposed rules during this comment period.

Modifications. The Board may modify the proposed expedited rules using either of two avenues: The Board may modify the rules directly so long as the modifications do not make them substantially different as defined in Minnesota Statutes section 14.05, subdivision 2, paragraphs (b) and (c). Or the Board may adopt substantially different rules if it follows the procedure under Minnesota Rules part 1400.2110. If the final rules are identical to the rules originally published in the State Register, the Board will publish a notice of adoption in the State Register. If the final rules are different from the rules originally published in the State Register, the Board must publish a copy of the changes in the State Register. If the proposed expedited rules affect you in any way, the Board encourages you to participate in the rulemaking process.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the Board contact person at the address or telephone number listed above.

Lobbyist Registration. Minnesota Statutes chapter 10A requires each lobbyist to register with the Minnesota Campaign Finance and Public Disclosure Board. You may direct questions regarding this requirement to the Board at 190 Centennial Office Building; 658 Cedar Street; St. Paul, Minnesota 55155; telephone 651-539-1180 or 1-800-657-3889.

Adoption and Review of Expedited Rules. The Board may adopt the rules at the end of the comment period. The Board will then submit rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date that the Board submits the rules. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the Board to receive notice of future rule proceedings, submit your request to the contact person listed above.

July 8, 2014

Deanna Wiener
Chair

1.1 **Campaign Finance and Public Disclosure Board**

1.2 **Proposed Expedited Rules Governing Complaints, Staff Reviews, Summary**
1.3 **Proceedings, Audits, and Investigations**

1.4 **4525.0100 DEFINITIONS.**

1.5 [For text of subps 1 to 2, see M.R.]

1.6 Subp. 2a. **Complaint.** "Complaint" means a written statement, including any
1.7 attachments, that:

1.8 A. alleges that the subject named in the complaint has violated chapter 10A or
1.9 another law under the board's jurisdiction; and

1.10 B. complies with the requirements in part 4525.0200, subpart 2.

1.11 Subp. 2b. **Complainant.** "Complainant" means the filer of a complaint.

1.12 Subp. 3. **Contested case.** "Contested case" means a proceeding ~~before the board~~
1.13 conducted under Minnesota Statutes, chapter 14, in which the legal rights, duties, or
1.14 privileges of specific parties are required by law or constitutional right to be determined
1.15 after a board hearing. "Contested case" includes a proceeding pursuant to a request for
1.16 exemption from campaign reporting requirements under Minnesota Statutes, section
1.17 10A.20, subdivisions 8 and 10; ~~a proceeding to suspend a public official without pay for~~
1.18 ~~failure to file a statement of economic interest under Minnesota Statutes, section 10A.09,~~
1.19 ~~subdivision 8;~~ a hearing ordered by the board under part 4525.0900, subpart 2 concerning
1.20 a complaint, investigation, or audit; and any other hearing which may be ordered by the
1.21 board under parts 4525.0100 to 4525.1000 or which may be required by law.

1.22 "Contested case" does not include a board investigation or audit conducted under
1.23 Minnesota Statutes, section 10A.02, subdivisions 9 and 10.

1.24 Subp. 4. [Repealed, 20 SR 2504]

1.25 Subp. 5. [See repealer.]

2.1 Subp. 6. [See repealer.]

2.2 Subp. 7. [Repealed, 20 SR 2504]

2.3 Subp. 8. **Respondent.** "Respondent" means the subject of a complaint, a formal
2.4 investigation, a formal audit, or a staff review or another form of summary proceeding.

2.5 **4525.0150 GENERAL PROVISIONS.**

2.6 Subpart 1. **Scope.** This part applies to all formal investigations, formal audits, or
2.7 staff reviews or other forms of summary proceedings conducted under this chapter and
2.8 Minnesota Statutes, chapter 10A.

2.9 Subp. 2. **Notice, where sent.** Whenever notice is required, if a respondent is
2.10 registered with the board, notices must be sent by electronic and United States mail to
2.11 the most recent addresses that the respondent provided in a registration statement filed
2.12 with the board.

2.13 Subp. 3. **Opportunity to be heard.** When a provision in this chapter or Minnesota
2.14 Statutes, chapter 10A, provides that a complainant or a respondent has an opportunity to
2.15 be heard by the board, the complainant or respondent must be given an opportunity to
2.16 appear in person at a board meeting before the board makes a determination on the matter.
2.17 The complainant or respondent is not required to appear before the board.

2.18 A complainant or respondent who has an opportunity to be heard may submit a
2.19 written statement to the board in addition to or in lieu of an appearance before the board.
2.20 A written statement under this part must be submitted at least ten business days before the
2.21 board meeting at which the matter will be heard. The executive director must provide any
2.22 submitted statement to the board before the board makes a determination on the matter.

2.23 The opportunity to be heard does not include the right to call witnesses or to question
2.24 opposing parties, board members, or board staff.

2.25 The board may set a time limit for statements to the board when necessary for the
2.26 efficient operation of the meeting.

3.1 When notice of the opportunity to be heard has been sent as required in subpart 2, the
3.2 failure to appear in person or in writing at the noticed meeting constitutes a waiver of the
3.3 opportunity to be heard at that meeting.

3.4 Subp. 4. **Continuance.** The board may continue a matter to its next meeting if:

3.5 A. the parties agree;

3.6 B. the investigation is not complete;

3.7 C. the respondent shows good cause for the continuance; or

3.8 D. the delay is necessary to equitably resolve the matter.

3.9 Subp. 5. **Authority reserved to board.** The provisions of this chapter do not affect
3.10 the board's authority under Minnesota Statutes, section 10A.02, subdivision 10, to order a
3.11 formal investigation or formal audit in any matter or to direct the executive director to
3.12 initiate a staff review or another form of summary proceeding of any matter.

3.13 **4525.0200 COMPLAINTS OF VIOLATIONS.**

3.14 Subpart 1. **Who may complain.** A person who believes a violation of Minnesota
3.15 Statutes, chapter 10A, or another provision of law placed under the board's jurisdiction by
3.16 Minnesota Statutes, section 10A.02, subdivision 11, or rules of the board has occurred
3.17 may submit a written complaint to the board.

3.18 Subp. 2. **Form.** Complaints must be submitted in writing. ~~The complaint may be~~
3.19 ~~submitted on a form provided by the board, or may be typed or handwritten.~~ The name and
3.20 address of the person making the complaint must be ~~typewritten or hand-printed~~ included
3.21 on the complaint and it must be signed by the complainant or an individual authorized
3.22 to act on behalf of the complainant. A complainant shall list the alleged violator and the
3.23 alleged violator's address if known by the complainant and describe the complainant's
3.24 knowledge of the alleged violation. Any evidentiary material should be submitted with the
3.25 complaint. Complaints are not available for public inspection or copying until after the

4.1 board makes a finding. ~~No investigations are required if a complaint is frivolous on its face,~~
4.2 ~~illegible, too indefinite, does not identify the violator, or is unsigned by the complainant.~~

4.3 Subp. 3. [Repealed, 30 SR 903]

4.4 Subp. 4. **Oath.** ~~Testimony~~ Evidence given in a meeting conducted by the board
4.5 under this chapter must be under oath. Arguments made to the board that do not
4.6 themselves constitute evidence are not required to be under oath.

4.7 Subp. 5. **Confidentiality.** Any portion of a meeting during which the board is
4.8 hearing testimony or taking action concerning any complaint, investigation, preparation
4.9 of a conciliation agreement, or a conciliation meeting must be closed to the public. The
4.10 minutes and tape recordings of a meeting closed to the public must be kept confidential.

4.11 Subp. 6. **Hearings.** At any time during an investigation of a complaint, the board
4.12 may hold a contested case hearing before making a finding on the complaint.

4.13 **4525.0210 DETERMINATIONS PRIOR TO FORMAL INVESTIGATION.**

4.14 Subpart 1. **Prima facie violation determination.** A prima facie determination is a
4.15 determination that a complaint is sufficient to allege a violation of Minnesota Statutes,
4.16 chapter 10A, or another provision of law placed under the board's jurisdiction by
4.17 Minnesota Statutes, section 10A.02, subdivision 11.

4.18 Subp. 2. **Preparation for prima facie determination.** After a complaint is filed,
4.19 the executive director must follow the notice provisions in Minnesota Statutes, section
4.20 10A.02, subdivision 11, with regard to the respondent's right to submit written arguments
4.21 addressing the prima facie determination. The notice must provide that the respondent
4.22 is not permitted to contact any board member directly regarding the complaint or the
4.23 prima facie determination.

4.24 Upon the expiration of the time provided for the respondent to submit written
4.25 argument, the executive director must submit the matter to the board member who will make

5.1 the determination or to all board members if the full board will make the determination.
5.2 The submission must include the complaint, any response submitted by the respondent,
5.3 and an analysis of the allegations of the complaint and the violations that it alleges.

5.4 Subp. 3. **Making the prima facie determination.** In determining whether a
5.5 complaint states a prima facie violation, any evidence outside the complaint and its
5.6 attachments may not be considered. Arguments of the respondent, which are not
5.7 themselves evidence, must be considered.

5.8 If a finding is made that a complaint does not state a prima facie violation, the
5.9 complaint must be dismissed without prejudice. The dismissal must be ordered by the
5.10 board member making the determination or by the full board if the full board makes the
5.11 determination. The order must be in writing and must indicate why the complaint does
5.12 not state a prima facie violation.

5.13 If a finding is made that a complaint states a prima facie violation, the board chair
5.14 must schedule the complaint for a probable cause determination.

5.15 Subp. 4. **Action after prima facie violation determination.** The executive director
5.16 must promptly notify the complainant and the respondent of the prima facie determination.
5.17 The notice must include a copy of the order making the prima facie determination.

5.18 If a determination is made that a complaint states a prima facie violation, the notice
5.19 also must include the date of the meeting at which the board will make a probable cause
5.20 determination regarding the complaint and a statement that the complainant and the
5.21 respondent have the opportunity to be heard before the board makes the probable cause
5.22 determination.

5.23 Subp. 5. **Probable cause determination.** In determining whether probable cause
5.24 exists, the board must consider the allegations of the complaint and the information and
5.25 arguments in any statement submitted by the complainant or respondent. The board must

6.1 also consider any inferences necessary to a probable cause determination that could be
6.2 drawn about the matter by a reasonable person.

6.3 To find probable cause to believe that a violation has occurred, the board must
6.4 conclude that the complaint presents a sufficient basis to order a formal investigation or
6.5 a staff review.

6.6 Subp. 6. **Action after probable cause not found.** If the board finds that probable
6.7 cause does not exist to believe that a violation has occurred, the board must order that the
6.8 complaint be dismissed without prejudice. The order must be in writing and must indicate
6.9 why probable cause does not exist to believe that a violation has occurred.

6.10 The executive director must promptly notify the complainant and the respondent
6.11 of the board's determination. The notice must include a copy of the order dismissing
6.12 the complaint for lack of probable cause.

6.13 Subp. 7. **Action after probable cause found.** If the board finds that probable cause
6.14 exists to believe that a violation has occurred, the board then must determine whether the
6.15 alleged violation warrants a formal investigation.

6.16 When making this determination, the board must consider the type of possible
6.17 violation; the magnitude of the violation if it is a financial violation; the extent of knowledge
6.18 or intent of the violator; the benefit of formal findings, conclusions, and orders compared to
6.19 informal resolution of the matter; the availability of board resources; and any other similar
6.20 factor necessary to decide whether the alleged violation warrants a formal investigation.

6.21 If the board orders a formal investigation, the order must be in writing and must
6.22 describe the possible violations to be investigated, the scope of the investigation, and the
6.23 discovery methods available for use by the board in the investigation.

6.24 The executive director must promptly notify the complainant and the respondent that
6.25 the board has found that probable cause exists to believe that a violation has occurred, that
6.26 the board has determined that the alleged violation warrants a formal investigation, and
6.27 that the board has ordered a formal investigation into the matter.

7.1 The notice to the respondent also must:

7.2 A. include a copy of the probable cause order;

7.3 B. explain how the investigation is expected to proceed and what discovery
7.4 methods are expected to be used;

7.5 C. explain the respondent's rights at each stage of the investigation, including
7.6 the right to provide a written response and the right to counsel; and

7.7 D. state that the respondent will be given an opportunity to be heard by the
7.8 board prior to the board's determination as to whether any violation occurred.

7.9 Subp. 8. **Action if formal investigation not ordered.** If the board finds that
7.10 probable cause exists to believe that a violation has occurred, but does not order a formal
7.11 investigation under subpart 7, the board must either dismiss the matter without prejudice
7.12 or offer the respondent the option of resolving the matter through a staff review under part
7.13 4525.0320. If the board offers the respondent the option of resolving the matter through a
7.14 staff review and that offer is not accepted, the board must order a formal investigation.

7.15 In making the determination of whether to dismiss the complaint or offer resolution
7.16 through a staff review, the board must consider the type of possible violation, the
7.17 magnitude of the violation if it is a financial violation, the extent of knowledge or intent of
7.18 the violator, the availability of board resources, and any other similar factor necessary to
7.19 decide whether to proceed with a staff review.

7.20 An order dismissing a matter must be in writing and must indicate why the matter
7.21 was dismissed.

7.22 The executive director must promptly notify the complainant and the respondent of
7.23 the board's determination. The notice must include a copy of the order.

8.1 **4525.0220 SUMMARY PROCEEDINGS.**

8.2 Subpart 1. **Summary proceeding.** A summary proceeding is an action other than a
8.3 complete formal investigation that is undertaken to resolve a matter or a part of a matter.
8.4 A staff review under part 4525.0320 is one form of summary proceeding.

8.5 Subp. 2. **Request by respondent.** At any time, a respondent may request that a
8.6 matter or a part of a matter be resolved using a summary proceeding. The request must
8.7 be in writing and must:

8.8 A. specify the issues the respondent is seeking to resolve through the summary
8.9 proceeding;

8.10 B. explain why those issues are suitable for the summary proceeding; and

8.11 C. explain how the proposed summary proceeding would be undertaken.

8.12 Subp. 3. **Consideration of request by board.** Upon receipt of a request for a
8.13 summary proceeding, the executive director must submit the request to the board. The
8.14 request must be considered by the board at its next meeting that occurs at least ten days
8.15 after the request was received.

8.16 The board is not required to agree to a request for a summary proceeding. If the board
8.17 modifies the respondent's request for a summary proceeding, the board must obtain the
8.18 respondent's agreement to the modifications before undertaking the summary proceeding.

8.19 **4525.0320 STAFF REVIEW.**

8.20 Subpart 1. **Staff review.** In a staff review, the executive director reviews information
8.21 and works informally with a respondent to determine whether a violation has occurred and
8.22 to determine how any identified violation should be resolved.

8.23 Subp. 2. **Staff review required.** The executive director must initiate a staff review
8.24 into a matter when directed to do so by the board.

9.1 Unless otherwise directed by the board, the executive director must also initiate a
9.2 staff review when information provided on a report filed with the board suggests that
9.3 there has been a violation of chapters 4501 to 4525, Minnesota Statutes, chapter 10A, or
9.4 another law placed under the board's jurisdiction pursuant to Minnesota Statutes, section
9.5 10A.02, subdivision 11.

9.6 Subp. 3. **Resolution of matter under staff review by amendment.** If a matter
9.7 under staff review is resolved by the respondent amending a report, the matter under staff
9.8 review must be closed by the executive director. The executive director must prepare a
9.9 brief summary of the matter and file the summary with the board's records related to
9.10 the respondent.

9.11 Subp. 4. **Resolution of matter under staff review by agreement.** Subject to board
9.12 approval under part 4525.0330, a respondent may agree to resolve a matter under staff
9.13 review by agreement. The agreement must describe any actions that the respondent has
9.14 agreed to take to remedy the violation or to prevent similar violations in the future. The
9.15 agreement must also include the amount of any civil penalty that the respondent has
9.16 agreed to pay and any other provisions to which the respondent has agreed.

9.17 **4525.0330 SUBMISSION TO BOARD; MATTER UNDER STAFF REVIEW**
9.18 **RESOLVED BY AGREEMENT.**

9.19 Every matter under staff review that is resolved by agreement under part 4525.0320
9.20 must be presented to the board at a public meeting as part of the board's consent agenda
9.21 or as a separate item on the regular agenda. Upon the request of one board member, any
9.22 agreement resolving a matter under staff review must be moved from the consent agenda
9.23 to the regular agenda.

9.24 The respondent must be given an opportunity to be heard by the board prior to the
9.25 board's decision regarding the agreement.

9.26 The executive director must send notice of the meeting to the respondent. The notice
9.27 must be sent not later than the time that the agreement is provided to the board and must

10.1 include a copy of the agreement. The notice must include the date of the meeting at which
10.2 the board will consider the matter and a statement that the respondent has the opportunity
10.3 to be heard by the board before the board's determination regarding the agreement.

10.4 An agreement made under part 4525.0320 to resolve a matter under staff review is
10.5 final only after the board approves the agreement.

10.6 If the board does not approve an agreement to resolve a matter under staff review, the
10.7 board must lay the matter over until its next meeting and:

10.8 A. provide guidance and direct the executive director to continue the staff
10.9 review; or

10.10 B. direct the executive director to prepare the matter for resolution by the board
10.11 without an agreement pursuant to part 4525.0340.

10.12 If an agreement proposed under this subpart is not approved by the board, any
10.13 admissions by the respondent and any remedial steps taken or agreed to by the respondent
10.14 are not evidence of a violation in any subsequent proceeding.

10.15 **4525.0340 SUBMISSION TO BOARD; MATTER NOT RESOLVED BY**
10.16 **AGREEMENT.**

10.17 Subpart 1. **Submission to board.** If a matter under staff review is not resolved by
10.18 agreement under parts 4525.0320 and 4525.0330, the executive director must submit the
10.19 matter to the board under this part.

10.20 Any other matter that the board is to consider for the authorization of a formal
10.21 investigation, other than a matter arising from a filed complaint, must be submitted to
10.22 the board under this part.

10.23 The submission must be in writing, must describe the potential violation involved,
10.24 and must include any supporting information. The submission must explain the actions
10.25 undertaken in any summary proceedings and any points of disagreement preventing
10.26 resolution of the matter. If the submission includes a recommendation for a formal

11.1 investigation of the matter, the submission must be made at a meeting closed to the public.

11.2 In all other cases, the submission must be made at a public meeting.

11.3 The respondent must be given an opportunity to be heard by the board prior to the
11.4 board's decision regarding the submission.

11.5 The executive director must send notice of the submission to the respondent. The
11.6 notice must be sent not later than the time that the submission is provided to the board
11.7 and must include a copy of the submission. The notice must include the date of the
11.8 meeting at which the board will consider the matter, and a statement that the respondent
11.9 has the opportunity to be heard by the board before the board's determination regarding
11.10 the submission.

11.11 When it receives a submission under this part, the board must take one of the
11.12 following actions:

11.13 A. provide guidance and direct the executive director to continue the staff review;

11.14 B. dismiss the matter without prejudice;

11.15 C. order a formal investigation of the matter; or

11.16 D. order the respondent to take the actions required to remedy the subject
11.17 violation and impose a civil penalty if provided for by statute.

11.18 The board must consider the evidence in the executive director's submission and the
11.19 information and arguments in any statement submitted by the respondent.

11.20 In making its determination, the board must consider the type of possible violation;
11.21 the magnitude of the violation if it is a financial violation; the extent of knowledge or
11.22 intent of the violator; the benefit of formal findings, conclusions, and orders compared to
11.23 informal resolution of the matter; the availability of board resources; and any other similar
11.24 factor necessary to decide whether the matter under review warrants a formal investigation.

12.1 Unless the board directs the executive director to continue the staff review, the board's
12.2 determination must be made in writing. The executive director must promptly notify the
12.3 respondent of the board's determination.

12.4 Subp. 2. **Formal investigation ordered.** An order for a formal investigation must
12.5 describe the alleged violations to be investigated, the scope of the investigation, and the
12.6 discovery methods available for use by the board in the investigation.

12.7 When the board orders a formal investigation, the executive director must promptly
12.8 notify the respondent that the board has ordered a formal investigation into the matter.

12.9 The notice to the respondent must:

12.10 A. include a copy of the order initiating the investigation;

12.11 B. explain how the investigation is expected to proceed and what discovery
12.12 methods are expected to be used;

12.13 C. explain the respondent's rights at each stage of the investigation, including
12.14 the right to provide a written response and the right to counsel; and

12.15 D. state that the respondent will be given an opportunity to be heard by the
12.16 board prior to the board's determination as to whether any violation occurred.

12.17 **4525.0500 INVESTIGATIONS AND AUDITS; GENERAL PROVISIONS.**

12.18 [For text of subp 1, see M.R.]

12.19 Subp. 2. [See repealer.]

12.20 [For text of subps 3 and 4, see M.R.]

12.21 Subp. 5. **Board meetings.** Board meetings related to an investigation or audit
12.22 must be conducted in accordance with part 4525.0200, subparts 4 ~~to 6~~ and 5. At every
12.23 board meeting, the executive director must report on the status of each active formal
12.24 investigation and formal audit.

13.1 Subp. 6. **Subpoenas.** The board may issue subpoenas when necessary to advance
13.2 an investigation or audit. The board may not issue a subpoena for the production of
13.3 documents or witness testimony until a respondent has had at least 14 days to respond
13.4 to a written request for the documents or testimony. When deciding whether to issue a
13.5 subpoena, the board must consider the level of staff resources in taking witness testimony
13.6 and conducting discovery.

13.7 Subp. 7. **Respondent submission.** In any investigation, audit, or staff review or
13.8 other summary proceeding, the respondent may supply additional information, including
13.9 sworn testimony, not requested by the board. The executive director must provide the
13.10 information submitted by the respondent to the board in advance of the meeting at which
13.11 the board will consider the matter.

13.12 **4525.0550 FORMAL AUDITS.**

13.13 Subpart 1. **Formal audit.** The purpose of a formal audit is to ensure that all
13.14 information included in the report or statement being audited is accurately reported. The
13.15 fact that the board is conducting a formal audit does not imply that the subject of the
13.16 audit has violated any law.

13.17 Subp. 2. **Respondent's rights.** The executive director must send a draft audit report
13.18 to the respondent before the board considers adoption of the final audit report. The
13.19 respondent has the right to respond in writing to the findings in the draft audit report. The
13.20 respondent must be given an opportunity to be heard by the board prior to the board's
13.21 decision regarding the draft audit report.

13.22 Subp. 3. **Final audit report.** At the conclusion of a formal audit, the board must
13.23 issue a final audit report. The final report must identify the subject of the audit and must
13.24 include the following:

13.25 A. the name of the primary board employee responsible for conducting the audit;

14.1 B. a description of the scope of the audit;

14.2 C. any findings resulting from the audit;

14.3 D. a description of any responses to the findings that the subject of the audit

14.4 provides; and

14.5 E. a description of the manner in which any findings were resolved.

14.6 The final audit report may not include any information related to audits that is

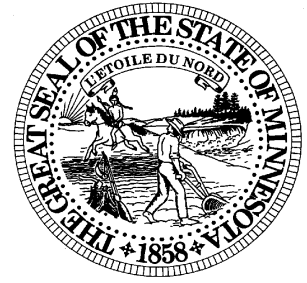
14.7 classified as confidential under Minnesota Statutes, chapter 10A.

14.8 **REPEALER.** Minnesota Rules, parts 4525.0100, subparts 5 and 6; and 4525.0500,

14.9 subpart 2, are repealed.

Minnesota

Campaign Finance and Public Disclosure Board



Date: July 7, 2014

To: Board members

From: Jodi Pope, Legal/Management Analyst

Telephone: 651-539-1183

Re: Revisor's changes to proposed expedited rules

The Revisor of Statutes has the authority to adopt styles and forms for rule drafting. The Revisor's Office made some changes to the proposed expedited rules to bring them into conformity with those styles and forms. Most of the changes fall into the following categories and do not affect the substance of the proposed rules:

1. Using the word "law" instead of the word "statute" in provisions referring to matters under the Board's general jurisdiction. For examples, see line 1.9 changing "another statutory provision" to "another law" and line 3.15 changing "another provision of Minnesota Statutes" to "another provision of law."
2. Putting the citation to a rule chapter before the citation to the statutory chapter. For example, see line 2.7 changing "Minnesota Statutes chapter 10A and Minnesota Rules chapter 4525" to "this chapter and Minnesota Statutes, chapter 10A."
3. Renumbering subpart 6a in part 4525.0100 as subpart 8.

The Revisor also proposed one non-substantive change to improve the clarity of the rules. Lines 13.7 to 13.9 in proposed part 4525.0500, subpart 7, currently provide as follows:

In any investigation, audit, or staff review or other summary proceeding, the respondent may supply additional information, including sworn testimony, not requested by the board.

The Revisor recommends changing this language to read:

In any investigation, audit, or staff review or other summary proceeding, the respondent may supply additional information not requested by the board, including sworn testimony.

Finally, the Revisor recommends that the Board examine the use of the word "sufficient" in the definitions of prima facie (line 4.16) and probable cause (line 6.4). The rule definition of prima facie uses the word "sufficient" because it quotes the statutory definition of this term. The rule definition of probable cause was developed during the rules committee meetings.