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Proposed coordination rules

Note: This is a draft of the proposed rules that clarify what conduct, actions, or relationships can prevent an expenditure from being independent. The proposed rules are likely to change in the coming weeks based on comments received from the public and discussion of those comments by committee members.

4503.0XXX COORDINATED EXPENDITURES.

Subp. 1. Candidate. For purposes of this part, "candidate" means a candidate as defined in Minn. Stat. section 10A.01, subdivision 10, the candidate's principal campaign committee, or the candidate's agent.

Subp. 2. Election segment. For purposes of this part, "election segment" means:

- A. For a regular election, the period from January 1 of the year prior to an election year through December 31 of the election year.
- B. For a special election, the entire special election cycle.

Subp. 3. Election cycle. For purposes of this part, "election cycle" has the meaning given this term in Minnesota Statutes section 10A.01, subdivision 16.

Commented [PJ(1): Because election cycle is added as a time limit to some provisions below, a reference to the statutory definition of this term was added to the part. The following subparts have been renumbers to reflect the addition of this definition and the definition of general treasury money.

Subp. 4. Coordinated. For purposes of this part, "coordinated" means with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate. A coordinated expenditure is an approved expenditure under Minnesota Statutes section 10A.01, subdivision 4.

Subp. 5. Spender. The definitions in Minn. Stat. section 10A.01 apply to the terms used in this subpart. For purposes of this part, "spender" means any of the following:

- A. An individual.
- B. An association.
- C. A political committee.
- D. A political fund.
- E. An independent expenditure political committee.
- F. An independent expenditure political fund.
- G. A party unit.

Subp. 6. Agent. For purposes of this part, "agent" means a person who served during the election segment as the candidate's chairperson, deputy chairperson, treasurer, deputy treasurer, fundraiser, advisor, or business representative, or any other person authorized to act on the candidate's behalf.

Subp. 7. Consultant. For purposes of this part, "consultant" means a person or an association that provides consulting services.

Subp. 8. Consulting services. For purposes of this part, "consulting services" means polling, communications planning and design, advertising, messaging, and any other service that involves campaign strategy. "Consulting services" does not mean printing or mailing campaign

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material, legal services that do not involve campaign strategy, accounting services, or costs for the use of a medium for communications purposes.

Subp. 9. General treasury money. For purposes of this part, "general treasury money" has the meaning given this term in Minnesota Statutes section 10A.01, subdivision 17c.

Commented [PJ(2): The definition of general treasury money is added to explain the fundraising provisions in subpart 10, item A.

Subp. 10. Coordinated expenditures. An expenditure listed below, when expressly advocating for the election of the candidate or the defeat of the candidate's opponent, is a coordinated expenditure that is not independent under Minn. Stat. section 10A.01, subd. 18:

A. An expenditure made during an election segment by a spender for which the candidate, during that same election segment, has engaged in fundraising of money that is not general treasury money ~~during that same election segment~~.

Commented [PJ(3): The references to money that is not general treasury money were added to ensure that item A does not apply to money that an association accumulates through membership dues and fees, donations to the association for its general purposes, and income from the operation of a business.

1. Fundraising includes:

- a. Soliciting, collecting, or directing money that is not non-general treasury money for or to the spender;
- b. Providing names of potential donors of money that is not general treasury money to the spender; and
- c. Appearing as a speaker at an event raising money that is not non-general treasury money for the spender.

2. This item applies to fundraising for money that is not general treasury money by an individual prior to the individual meeting the definition of a candidate in Minn. Stat. section 10A.01, subd. 10.

3. This item does not apply to a candidate's fundraising on behalf of a party unit.

B. An expenditure that reproduces or disseminates, in whole or in part, campaign material designed, produced, paid for, or distributed by the candidate.

1. This item does not apply to:

- a. Campaign material incorporated into a communication that advocates the defeat of the candidate who prepared the material;
- b. Campaign material used in a news story or editorial; or
- c. The reproduction or dissemination of a candidate's campaign materials if the reproduction or dissemination costs \$20 or less.

C. An expenditure made during an election segment for consulting services from a consultant that has also provided consulting services to the candidate or the candidate's opponent during that same election segment.

1. This item does not apply when the following conditions are met:

- a. The consultant assigns separate personnel to the spender and the candidate;
- b. The consultant has a written policy that describes the measures that the consultant has taken to prohibit the flow of information between the

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personnel providing services to the spender and the personnel providing services to the candidate;

- c. The written policy has been distributed to all personnel and clients covered by the policy including the candidate and the spender;
- d. The consultant has implemented the measures described in the written policy; and
- e. No information has been shared between the spender and the personnel provided services to the spender and the candidate and the personnel providing services to the candidate.

D. ~~An expenditure made by a spender when the formation of the spender was coordinated with the candidate during the election segment.~~

Commented [PJ(4)]: Item D is deleted because it is very similar to E.

E. An expenditure made during an election cycle by a spender that:

1. Is not a party unit; and
2. ~~Was~~ ~~is~~ established, ~~financed~~, directed, or managed during the same election segment cycle by any of the following:
 - a. The candidate;
 - b. An individual who meets the definition of a candidate under Minn. Stat. section 10A.01, subd. 10, during the same election ~~segment cycle~~; or
 - c. The candidate's spouse, ~~child, parent, grandparent, sibling, or half sibling, or the spouses of such persons.~~
 - d. ~~An agent of the candidate.~~
3. This item does not apply to the spouse of the candidate's agent.

Commented [PJ(5)]: This was removed to ensure that candidates and their agents can make individual donations to political committees and funds. In addition, an individual who makes a donation large enough to fund an entire independent expenditure committee or fund probably also will be involved in the establishment, direction, or management of that group as well.

Commented [PJ(6)]: The candidate's spouse was left in this subpart on the grounds that the candidate and the spouse share living quarters and it therefore is unrealistic to believe that the spouse does not know anything about the candidate's campaign.

The agent of the candidate was removed because agent is included in the definition of candidate.

F. An expenditure made after the spender receives from the candidate information that is not publically available regarding the candidate's campaign plans, strategy, or needs.

Commented [PJ(7)]: Because the definition of the term "candidate" includes the candidate, the candidate's campaign committee, and the candidate's agent, the reference to the candidate's spouse in paragraph c technically would include the spouse of the candidate's agent. Subitem 3 therefore is included to specify that the provision does not apply to the spouse of a candidate's agent.

G. An expenditure made when:

1. The spender provides information to the candidate regarding the expenditure's contents, intended audience, timing, location or mode, volume, or frequency; and
2. The information is provided to the candidate before the expenditure is communicated to the public.

H. An expenditure made with the candidate's participation in the following:

1. Any of the processes required for the creation and development of the expenditure, including budgeting decisions, media design, acquisition of graphics and text, production, and distribution of the final product; or
2. Any decision regarding the content, timing, location, ~~means or mode~~, intended audience, volume of distribution, or frequency of the expenditure.

Commented [PJ(8)]: Removed because it wasn't clear what these meant.

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- I. An expenditure made during an election cycle that was independent under Minnesota Statutes section 10A.01, subdivision 18, when made that is later used in whole or in part during the same election cycle by a candidate as campaign material.

This item does not apply if the candidate pays the spender for the fair market value of the design or development costs expended to create the campaign material used by the candidate.

Commented [PJ(9)]: The changes here were added to create a time limit for the provision and to create a safe harbor for the spender who created the independent expenditure later used by the candidate without the spender's knowledge.

Subp. 11. Non-coordinated expenditures. An action listed below, by itself, does not establish that an expenditure made by the spender was coordinated with the candidate:

- A. A candidate asks a spender not to make any expenditure to support the candidate or oppose the candidate's opponent.
- B. An expenditure uses a photograph obtained from a publicly available source or public event.
- C. An expenditure uses information obtained from a biography, position paper, press release, or similar material about the candidate from a publicly available source or public event.
- D. The spender contributes to the candidate or endorses the candidate.
- E. An expenditure includes a hyperlink to the candidate's website or social media page.
- F. An expenditure appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication.
- G. The spender discusses the candidate's position on a legislative or policy matter with the candidate.
- H. The spender invites the candidate to appear before the spender's members, employees, or shareholders including the candidate's participation in the event, unless the event promotes the election of the candidate or the defeat of the candidate's opponent, or the candidate requests or accepts campaign contributions at the event.