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Draft disclaimer and non-expenditure provisions

4501.0100 DEFINITIONS

[For text of subparts 1 – 3, see M.R.]

Supb. 3a. **Campaign material.** “Campaign material” has the meaning given this term in Minnesota Statutes section 211B.01, subdivision 2.

[For text of subparts 4-9, see M.R.]

4501.0500 FILINGS, SUBMISSIONS, AND DISCLOSURES.

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

Subp. 1a. **Completion of filing.** A filing with the board is complete upon:

A. receipt in the board office of the document being filed, bearing the original signature of the person responsible for filing the document;

B. receipt of a facsimile transmission of the document, subject to ~~subpart 2~~ Minnesota Statutes section 10A.025, subdivision 1a;

C. the postmark date of a first class or certified mailing of the document being filed, properly addressed to the board at its current address; or

D. the successful submission of an electronic file to the board.

[For text of subparts 3-4, see M.R.]

4501.0200 SECURITIES.

Subpart 1. **Items which are securities.** For purposes of Minnesota Statutes chapter 10A and Minnesota Rules chapters 4501 through 4525, securities include any stock, share, bond, warrant, option, pledge, note, mortgage, annuity, debenture, lease, or commercial paper, in any corporation, partnership, mutual fund, trust, or other association.

Subp. 2. **Items which are not securities.** For purposes of Minnesota Statutes chapter 10A and Minnesota Rules chapters 4501 through 4525, securities do not include deposits in a savings account, certificates of deposit, money market certificates, treasury bills, bonds or notes, dividends from securities, shares in a mutual fund or exchange traded fund, or holdings in a defined benefit pension or retirement plan.

Subp. 3. **Holder of securities.** A "holder of securities" is an individual having an ownership interest in a security, or who is the trustee or beneficiary of a trust having an ownership in a security. An individual owning shares in a mutual fund does not have an ownership interest in underlying securities owned by the fund. An individual owning an annuity does not have an ownership interest in underlying securities owned by the annuity.

Subp. 4. **Valuation of securities.** The value of a security is its fair market value. For securities traded on national exchanges, the fair market value is the closing bid price for the

Commented [PJ(1): This definition is needed for the disclaimer section below.

Commented [PJ(2): This provision is necessary to correct a reference to a rule part that was moved to statute during the last legislative session.

Commented [PJ(3): This amendment is intended to remove mutual and exchange traded funds from the list of securities that must be disclosed on statements of economic interest and to add annuities to that list. Mutual and exchange traded funds are being removed because those funds typically are too large to be affected by one official's actions. Annuities are being added because those investments are regulated by the state and therefore could create potential conflicts of interest for some officials.

Commented [PJ(4): There has been much confusion about whether "retirement plan" includes 401(k)s or other IRAs. Consequently, language has been added specifying that only defined benefit pension plans are excluded from the definition of securities. Defined benefit plans are excluded because beneficiaries of those plans do not have control over the investments held by the. Beneficiaries of 401(k) and other IRA plans, however, can direct the investments held by those plans.

Commented [PJ(5): This amendment has been added because it is the fact that the official owns an annuity that could create a potential conflict of interest, not the underlying securities owned by the annuity. Thus, there is minimal value in requiring disclosure of those underlying securities.

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security on a given date. The value of a partial interest in a security is the value of the holder's proportionate share.

Subp. 5. **Exception for charitable trusts.** Trustees of associations organized for charitable, philanthropic, religious, social service, educational, or other public use or purpose are not holders of securities owned by the associations.

Subp. 6. **Exception for blind trusts.** When a trust is organized to prevent the beneficiary from having any knowledge of the assets held by the trust, the beneficiary of the trust is not required to report the underlying securities owned by the trust.

Commented [PJ(6): This provision ensures that beneficiaries of blind trusts are not required to report trust assets of which they are supposed to have no knowledge.

4503.0500 CONTRIBUTIONS

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

Subp. 2. **Time of receipt of contributions.**

Commented [PJ(7): These amendments are intended to clarify when contributions made through electronic means are received.

A. A monetary contribution not made through electronic means is received by a political committee or political fund, for reporting and contribution limit purposes, when the instrument conveying the contribution, such as cash, check, or money order, is physically received by the treasurer, the candidate, or a committee or fund worker.

B. A contribution delivered through the United States mail is received on the date the mail is gathered from the delivery point by the treasurer, the candidate, or a committee or fund worker.

C. A monetary contribution made through electronic means is received for purposes of the registration requirements in section 10A.14; the reporting requirements in section 10A.20; the sessional contribution prohibition in section 10A.273; and the affidavit of contributions requirement in section 10A.323, on the date that the contributor makes the contribution to the contribution processor.

Commented [SJ(8): This section provides that for the various reporting deadlines and cutoff requirements of chapter 10A, the date the electronic contribution was made is used.

D. A monetary contribution made through electronic means is received for purposes of the deposit requirements in section 10A.15, subdivision 3, on the date that the treasurer, the candidate, or a committee or fund worker has access to the funds under the terms of the agreement with the contribution processor.

Commented [SJ(9): This section provides that the deposit deadline is set when the electronic contribution may be downloaded to the committee account.

[For text of subparts 3 – 9, see M.R.]

Subp. 10. **Electronic contribution processors.** An organization that provides contribution processing and delivery services, when acting in the ordinary course of business by collecting and disbursing contributions to a committee or fund that was designated by the contributor, is not required to register under Minnesota Statutes section 10A.14 or report under Minnesota Statutes section 10A.20.

Commented [PJ(10): This provision enacts portions of Advisory Opinions 319, 369, and 434 into rule.

4503.1300 GOVERNOR AND LIEUTENANT GOVERNOR.

[For text of subparts 1-3, see M.R.]

Subp. 4. **Contribution limits for governor and lieutenant governor before and after merger of separate committees.** Prior to the merger of separate principal campaign committees for governor and lieutenant governor, each committee may accept contributions up

Commented [PJ(11): This amendment is necessary to correct a reference to a rule part that was moved into statute during the last legislative session.

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to the limits set forth in Minnesota Statutes, section 10A.27, subdivision 1, clause (a), for governor and lieutenant governor running together. After the merger of the committees, contributions to either committee from a single source must be aggregated in determining whether the contribution limit for the joint committee has been reached or exceeded. If the limit has been exceeded, contributions must be returned in accordance with ~~subpart 5~~ Minnesota Statutes section 10A.27, subdivision 16a.

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

4503.1400 PUBLIC SUBSIDY AGREEMENTS.

[For text of subparts 1-3, see M.R.]

Subp. 3a. Effect on contributions to independent expenditure committees and funds. By signing a public subsidy agreement, a candidate agrees that the provision in Minnesota Statutes section 10A.25, subdivision 3a, prohibiting a candidate's principal campaign committee from making independent expenditures also prohibits a candidate's principal campaign committee from making contributions to independent expenditure political committees or funds.

Commented [PJ(12): This provision enacts Advisory Opinion 412 into rule.

Subp. 10. Special elections held under Minnesota Statutes section 204B.13, subdivision 2, paragraph (c). The filing deadlines below apply to a special election held under Minnesota Statutes section 204B.13, subdivision 2, paragraph (c), for which there is no filing period:

Commented [PJ(13): This provision specifies how to administer the deadlines for the public subsidy program when a special election is called to fill a vacancy in nomination under section 204B.13, subdivision 1, paragraph (c). These special elections do not have filing periods like typical special elections. Instead, the political party with the vacancy in nomination has until 7 days after the general election to submit the name of the party's candidate. This subpart uses the deadlines applicable to typical special elections (1 day after the filing period closes for the agreement; five days after the filing period closes for the affidavit) and ties them to the deadline for submitting the name of the party's new candidate (7 days after the general election).

- A. The candidate must sign and submit the public subsidy agreement to the board not later than eight calendar days after the general election.
- B. The candidate must submit the affidavit of contributions not later than 12 calendar days after the general election.

4503.1900 DISCLAIMERS

Subpart 1. Written independent expenditures in opposition to a candidate. A written independent expenditure in opposition to a candidate that uses the language below in the communication satisfies the disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04:

Although the rule says "calendar days," the provision in Minn. R. 4501.0500, subpart 3, stating that when a filing date falls on a weekend or holiday, the filing date moves to the next business day would still be applicable.

This is an independent expenditure in opposition to(insert candidate name) prepared and paid for by (insert name of entity participating in the expenditure),(insert address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.

Commented [PJ(14): This section specifies language that would satisfy both the disclaimer requirement for independent expenditures and the disclaimer requirement for campaign material. It also specifies language that would satisfy the statutory disclaimer requirements in other common situations not explicitly discussed in those statutes, such as when two entities jointly produce a communication.

Subp. 2. Written independent expenditures in support of a candidate. A written independent expenditure in support of a candidate that uses the language below in the communication satisfies the disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04:

Commented [PJ(15): Subparts 1 through 4 specify language for written communications.

This is an independent expenditure in support of(insert candidate name) prepared and paid for by(insert name of entity participating in the expenditure),(insert address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.

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Subp. 3. Written independent expenditures that name more than one candidate supported or more than one candidate opposed. When a written independent expenditure names more than one candidate supported or names more than one candidate opposed, the disclaimer must

- A. include the names of each candidate supported or opposed by the communication;
or
- B. use the phrase “the candidates named” in place of the list described in item A.

Subp. 4. Written independent expenditures without cost. If a written independent expenditure is produced and disseminated without cost, the words “and paid for” may be omitted from the disclaimer.

Subp. 5. Independent expenditures; broadcast media. A. An independent expenditure disseminated through broadcast media that uses the language below in the communication satisfies the disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04:

Commented [PJ16]: This subpart establishes the language for disclaimers on broadcast communications.

This independent expenditure is paid for by (insert name of entity participating in the expenditure). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.

B. An independent expenditure produced and broadcast without cost that uses the language below in the communication satisfies the disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04:

..... (insert name of entity participating in the expenditure) is responsible for the contents of this independent expenditure. It is not coordinated with or approved by any candidate nor is any candidate responsible for it.

Subp. 6. Independent expenditures; more than one participant. When more than one entity participates in making an independent expenditure that requires a disclaimer under Minnesota Statutes section 10A.17, subdivision 4, the name of every participating entity must be included in the disclaimer. In written communications, the address of each entity must be listed after the entity’s name.

Subp. 7. Campaign material; more than one participant. When more than one entity participates in the preparation or dissemination of campaign material that requires a disclaimer, under Minnesota Statutes section 211B.04, paragraph (a), the name of every participating entity must be included in the disclaimer. In written communications, the address of each entity must be listed after the entity’s name.

Subp. 8. Disclaimer requirements; services for a constituent. Communications prepared as services for a constituent under Minnesota Statutes section 10A.01, subdivision 26, paragraph (6), must include the disclaimer required by Minnesota Statutes section 211B.04 when the communications are disseminated after adjournment sine die of the legislature in the election year for the office held.

Commented [PJ17]: This provision clarifies confusion about whether a disclaimer is necessary on constituent services communications distributed during the time when those communications must be reported as campaign expenditures.

Subp. 9. Disclaimer requirements; type sizes. A disclaimer in a written communication satisfies the requirement in Minnesota Statutes section 10A.17, subdivision 4, that an independent expenditure disclaimer be in conspicuous type and the requirement in Minnesota

Commented [PJ18]: The rules do not set font sizes for all communications because there was no way to craft requirements that fit all written communications. Instead, this provision creates safe harbors for two types of commonly-used communications.

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Statutes section 211B.04 that campaign material prominently include a disclaimer when the disclaimer meets the following type size requirements:

- A. For written communications other than an outdoor sign, website, or social media page, the disclaimer is printed in at least 8 point type.
- B. For written communications on a website or social media page, the disclaimer is printed in the same point type as the majority of the text in the body of the website or social media page.

Subp. 10. **Disclaimer requirements; homepages of websites and social media pages.** The disclaimer requirements in Minnesota Statutes section 10A.17, subdivision 4, and Minnesota Statutes section 211B.04 are satisfied for an entire website or social media page when the required disclaimer appears once on the homepage of the site.

4525.0330 SUBMISSION TO BOARD; MATTERS UNDER STAFF REVIEW RESOLVED BY CONCILIATION AGREEMENT.

Subpart 1. **Matter under staff review resolved by conciliation agreement.** A matter under staff review that is resolved by conciliation agreement under part 4525.0320 must be presented to the board for approval at a meeting closed to the public under part 4525.0200, subpart 5.

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.

A conciliation 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 a conciliation 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.

Subp. 2. **Matter under staff review resolved; no violation.** The executive director must close a matter under staff review when the staff review establishes that no violation of the campaign finance laws has occurred. The executive director must report the closure of the

Commented [PJ(19)]: The amendments to parts 4525.0330 and 4525.0340 make it possible for staff reviews to be resolved immediately through closure or the prompt issuance of findings. Currently, even staff reviews where no violation is found must be presented to the Board for resolution, which delays the resolution of the matter for at least five weeks.

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matter to the board at a meeting closed to the public under part 4525.0200, subpart 5, and must send notice of the closure to the respondent.

Subp. 3. **Matter under staff review; violation not requiring formal investigation.** A matter under staff review that is resolved without a formal investigation under part 4525.0340 must be submitted to the board for approval at a meeting closed to the public under part 4525.0200, subpart 5.

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

The executive director must send notice of the meeting to the respondent. The notice must be sent not later than the time when the written document resolving the matter is provided to the board and must include a copy of the written document resolving the matter. 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 resolution of the staff review.

A written document concluding a matter under staff review without a formal investigation is final only after the board approves the document.

If the board does not approve the written document resolving a matter under staff review without a formal investigation, the board must:

- A. provide guidance and direct the executive director to continue the staff review;
- B. initiate a formal investigation of the matter; or
- C. direct the executive director to prepare the matter for resolution by the board pursuant to part 4525.0340.

If a written document resolving a staff review without a formal investigation 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; BOARD-INITIATED INVESTIGATIONS AND NOT RESOLVED BY CONCILIATION AGREEMENT.

Subpart 1. **Submission to board.** The executive director must submit the following matters to the board for decision under this part:

- A. a matter under staff review that is not resolved by ~~conciliation agreement~~ under parts 4525.0320 and 4525.0330; and
- B. any other matter that the board is to consider for the authorization of a formal investigation, other than a matter arising from a filed complaint.

The submission must be in writing, must describe the potential violation involved, and must include any supporting information. The submission must explain the actions undertaken

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in any summary proceedings and any points of disagreement preventing resolution of the matter.

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

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

[For text of subparts 2-3, see M.R.]

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