STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
. . . . . .
October 7, 2014
Room G-31
Minnesota Judicial Center
. . . . . .

MINUTES

The meeting was called to order by Chair Wiener.

Members present: Beck, Peterson, Rosen, Sande, Wiener
Members absent: Member Oliver, who had notified the Chair that he would not be able to attend.

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

MINUTES (September 2, 2014)

Member Sande proposed making the following amendment to the legislative recommendation section of the minutes:

> Members discussed the need to move quickly to finalize the legislative recommendations so that members would be ready to meet with legislators in December to begin ~~gathering support for~~ discussing the proposals.

After discussion, the following motion was made:

Member Sande's motion:	To approve the September 2, 2014, minutes with the proposed amendment to the legislative recommendation section if that amendment is necessary to make the minutes consistent with the recording of the meeting.
Vote on motion:	Unanimously passed.

Executive Director Note: The recording of the September 2, 2014, meeting showed that the amendment was necessary to make the minutes consistent with the recording. The minutes for the September 2, 2014, meeting have been amended accordingly.

CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for November 18, 2014. A tentative schedule for 2015 was presented to members for consideration.

EXECUTIVE DIRECTOR TOPICS

Status of office operations

Mr. Goldsmith reported that staff was working on the budget for the next biennium, reviewing the bids received for the Board's computer projects, and preparing for the next reporting deadline on October 27, 2014. Mr. Goldsmith said that he also had made several presentations to outside groups since the last meeting.

Reconciliation of board data

Assistant Director Sigurdson reported that little progress had been made on the reconciliation because student intern, Dan Hegg, had been forced to stop working due to his classwork. Mr. Sigurdson said that the need for staff to focus on the new reports being filed also had prevented staff from working on reconciliation issues. Mr. Sigurdson said that after the next reporting deadline on October 27th, staff would begin the process necessary to hire a new student worker. Mr. Sigurdson told members that it also was possible that Mr. Hegg could return to work over his holiday break or during the spring semester.

Website redevelopment

Mr. Goldsmith told members that the Board had received 315 responses to the website redesign survey and that 60 people had offered to help with the project. Mr. Goldsmith said that two groups probably would be created: one to assist only through email communications and a second that would meet regularly with staff. Mr. Goldsmith said that staff continued to meet with MN.IT to discuss the redesign of the website. Mr. Goldsmith emphasized the importance of having a good design for the website before beginning the actual programming.

Members asked Mr. Goldsmith to prepare a formal report on data reconciliation and website redevelopment for the legislature that contained the information that Mr. Goldsmith had just presented to the Board. Members then discussed how to increase legislative and public knowledge of the Board's disclosure activities. Mr. Goldsmith and members also discussed the relationship between the amount of resources available to the Board and the speed with which priority projects, such as the website redesign, could be completed.

Board audits

Member Sande asked staff to begin developing a memorandum for treasurers that described the transactions most likely to trigger a Board audit. Members discussed where audits should be on the list of Board priorities. Members also discussed the fact that Board staffing levels appeared to be low when compared to comparable agencies in comparable states.

Board policy review

Mr. Goldsmith said that beginning in November, he would ask members to review one or two existing Board policies each month to ensure that these policies remained current.

ENFORCEMENT REPORT

Discussion items

A. Request to withdraw registration – Local 1216 PAC Fund.

Mr. Fisher told members that the Local 1216 PAC Fund believed that it was required to register with the Board when, in fact, it only planned to participate in local elections. The Fund has not made, and does not intend to make, any expenditures to influence state elections.

After discussion, the following motion was made:

Member Sande's motion: To allow the Local 1216 PAC Fund to withdraw its registration.

Vote on motion: Unanimously passed.

B. Request to withdraw registration – BMO Harris Bank NA Government Affairs Fund.

Mr. Fisher said that the Fund registered with the Board expecting to make a contribution but ultimately did not make any contributions. The Fund has not raised any money for Minnesota activities.

After discussion, the following motion was made:

Member Peterson's motion: To allow the BMO Harris Bank NA Government Affairs Fund to withdraw its registration.

Vote on motion: Unanimously passed.

C. Waiver requests

Name of Candidate or Committee	Late Fee Amount	Civil Penalty Amount	Reason for Fine	Factors for waiver	Board Member's Motion	Motion	Vote on Motion
MPLS Police Fraternal Assoc.	$1,000	$0	24 hr. notice	Did not realize that transfer of funds from operating account to political account constituted a contribution.	Peterson	To waive the late fee.	Unanimous
Charles Cook	$300	$0	6/16/2014 LDR	Previous designated lobbyist left association in October 2013. Lobbyist did not inform Board of termination. Association alleges it attempted to send registration documents for new designated	Peterson	To waive the late fee.	Unanimous

				lobbyist to Board on 5/28/2014. Documents were not received. After calling association on filing deadline, staff discovered that old designated lobbyist was no longer with the association. New designated lobbyist registered with Board on 6/27/2014, and backdated to proper date of 2/24/2014. Old designated lobbyist terminated effective 10/15/2013.			
Printing Industries PAC	$50	$0	7/28/2014 Pre-primary	Treasurer neglected to forward scan of report until the following day.	Sande	To waive the late fee.	Unanimous
Della Young	$50	$0	EIS	Official forgot to submit statement due to meeting preparations.	Peterson	To waive the late fee.	Unanimous (Wiener recused.)
Leech Lake PAC	$450; $150	$0	6/16/2014 2nd Report; 7/28/2014 Pre-primary	New treasurer registered with Board on 8/1/2014. Staff turnover lead to issues in filing. Requestor is not the treasurer. Both reports were no change statements.	Rosen	To waive the $150 late fee for the July report and reduce the $450 late fee for the June report to $250.	Passed (Peterson voting no.)

D. Request for direction regarding failure to receive EIS statements – Ronald Gray and Abdulkarim Godah.

Mr. Fisher said that the Board had received an incomplete EIS submission from Mr. Gray and no submission from Mr. Godah. Mr. Fisher told members that all letters sent to Mr. Godah had been returned for insufficient address. Multiple voicemails had been left for both individuals at the numbers provided to the Board. Both matters have reached the maximum of $100 in late filing fees and $1,000 in civil penalties, although it does not appear that Mr. Godah ever received written notice. Mr. Fisher stated that because both candidates were affidavit-only filers who never registered committees and who lost their primary election contests, staff was seeking direction as to whether the Board wanted to commit resources to seeking compliance and/or payment from these individuals.

After discussion, the following motion was made:

Member Peterson's motion:	To direct the Executive Director to close these matters with a memorandum to each candidate's file and to take no further action.
Vote on motion:	Unanimously passed.

E. Referral of Minnesotans for Benjamin Kruse to the Attorney General's Office.

Mr. Goldsmith told members that the Minnesotans for Benjamin Kruse committee had two compliance matters currently outstanding. First, the committee had yet to file a 2013 year-end Report of Receipts and Expenditures. The late filing fee reached its maximum of $1,000 on March 31, 2014, and the civil penalty reached its maximum of $1,000 on April 26, 2014. Second, the committee had yet to file an amended 2012 year-end Report of Receipts and Expenditures reconciling nine contributions. The late filing fee reached its maximum of $1,000 on December 20, 2013, and the civil penalty reached its maximum of $1,000 on May 19, 2014.

Mr. Goldsmith said that numerous letters had been sent to Mr. Kruse and staff had attempted to contact him by telephone. Mr. Goldsmith said that Mr. Kruse had not responded to any staff contact. Mr. Goldsmith reported that in addition to the current matters before the Board, the committee had $500 in outstanding fines for a 2012 election year EIS, a 2012 pre-primary-election report, and a 2012 pre-general-election report. Mr. Goldsmith said that staff was asking the Board to refer this matter to the Attorney General to compel the filing of the missing reports and to collect the $3,600 in outstanding fines. Mr. Goldsmith said that staff also recommended that the Board assess a civil penalty of up to $3,000 for the willful failure to file an amended 2012 year-end report and that this civil penalty be assessed against Mr. Kruse personally, not against the committee.

After discussion, the following motion was made:

Member Beck's motion:	To refer the matter to the Attorney General to compel filing of the 2012 and 2013 reports and to collect the $3,600 in outstanding fines.
Vote on motion:	Unanimously passed.

Informational Items

A. Payment of a late filing fee for Economic Interest Statement:
Phillip Nelson, $30

B. Payment of a late filing fee 2013 year-end Report of Receipts and Expenditures
Citizens for Devin Gawnmark, $125

C. Payment of a late filing fee for 2014 24-hour Notice of Pre-primary-election large contribution:
Northeast ALC PAC, $100
Bridgit Sullivan for Judge, $50

D. Payment of a late filing fee April 14, 2014, Report of Receipts and Expenditures:
Pharm PAC, $50

E. Payment of a late filing fee June 16, 2014, Report of Receipts and Expenditures:
Independent Community of Bankers, $450
Olmsted County Deputy Sheriff's Assoc Political Fund, $100
Otter Tail Power PAC, $150

F. Payment of a late filing fee July 28, 2014, Report of Receipts and Expenditures:
Cornish (Tony) for State Rep, $100
IBEW State Council PAC, $50
Pediatric Home Service PAC, $450
SEH Employees Minn Fund, $50
SMART PAC, $100
Sprinkler Fitters Local 417, $50
Vote 66, $450

G. Payment of a late filing fee for June 16, 2014, lobbyist disbursement report:
Nancy Hylden, Clear Channel Outdoors Inc, $25
Kris Jacobs, Jobs Now Coalition, $75
Phil Stalboerger, Medical Transportation Management, $50

H. Payment of a civil penalty for contribution from an unregistered association:
James Niemackl for Senate, $100

RULEMAKING

Ms. Pope presented members with a memorandum on this topic that is attached to and made a part of these minutes. Ms. Pope said that at the September meeting, the Board had approved several modifications to the proposed rules that were based on suggestions received early in the comment period. The adopted modifications did not incorporate comments received near the end of the comment period because there was not enough time before the meeting to adequately review those suggestions.

Ms. Pope said that after reviewing all comments received, staff proposed two additional modifications to the proposed rules. One modification removed language in part 4525.0150, subpart 5, that was unnecessary now that staff reviews would be a form of investigation. The second modification removed the requirement in part 4525.0150, subpart 3, that written statements from complainants and respondents be submitted at least 10 business days before the meeting at which the matter would be heard. Ms. Pope explained that this 10-day requirement did not accurately reflect the timeline for providing materials to Board members before a meeting. Ms. Pope said that the modifications adopted at the September meeting and the two new proposed modifications were all contained in the revisor's draft file number AR4279 dated 09/04/14.

Ms. Pope also told members that although the Board had removed the email notice requirement in part 4525.0150, subpart 2, at the September meeting, members had asked to revisit this issue at the October meeting.

After discussion, the following motions were made:

Member Beck's motion:	To revert to the original notice language proposed in part 4525.0150, subpart 2.
Vote on motion:	Unanimously passed.

Member Sande's motion:	To amend the proposed rules to include the modifications recommended by staff to part 4525.0150, subpart 3 and part 4525.0150, subpart 5.
Vote on motion:	Unanimously passed.
Member Beck's motion:	To adopt the revisor's draft of the proposed rules, file number AR4279, dated 09/04/14, as amended to restore the original language proposed in part 4525.0150, subpart 2.
Vote on motion:	Unanimously passed.
Member Beck's motion:	To adopt the following resolution:

"Resolved, that the Campaign Finance and Public Disclosure Board approved and adopted rules about Complaints, Staff Reviews, Summary Proceedings, Audits, and Investigations in the Revisor of Statutes draft, file number AR4279, dated 09/04/14, identified as Minnesota Rules chapter 4525, as amended by the Board at its meeting of October 7, 2014, to restore the original language proposed in part 4525.0150, subpart 2, under the Board's authority under Minnesota Statutes section 10A.02, subdivisions 10 and 13. Gary Goldsmith, the Executive Director of the Campaign Finance and Public Disclosure Board, is authorized to do the following: sign the Order Adopting Rules, modify the rules as needed to obtain the Revisor of Statutes or the Administrative Law Judge's approval of the rules, sign an Amended Order Adopting Rules that includes any rule modifications needed to obtain the Revisor of Statutes or the Administrative Law Judge's approval of the rules, and perform other necessary acts to give the rules the force and effect of law."

Vote on motion:	Unanimously passed.

LEGISLATIVE RECOMMENDATIONS

Mr. Goldsmith presented members with a list of potential legislative changes that is attached to and made a part of these minutes. Mr. Goldsmith explained why staff was recommending that some items on the list not be pursued this year. Members did not disagree with the staff recommendations. Mr. Goldsmith said that staff would begin drafting potential language to show members at the next meeting.

LEGAL COUNSEL'S REPORT

Ms. Hartshorn had nothing to add to the provided report.

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 the following items to report into regular session:

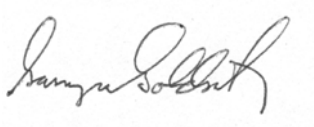
Probable cause determination in the complaint of Mueller regarding Matt Entenza for Auditor
Probable cause determination in the complaint of Bradley regarding Rich Wright for MN
Findings and order in the Board investigation of Timothy Manthey for Senate

These decisions are attached to and made a part of these minutes.

OTHER BUSINESS

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

Respectfully submitted,



Gary Goldsmith
Executive Director

Attachments:
Memorandum regarding referral of Minnesotans for Benjamin Kruse to the Attorney General
Memorandum regarding proposed rules
Draft rules
Draft order adopting rules
Draft form for Governor's Office
Draft Certificate of Board Resolution
List of legislative recommendations
Memorandum regarding language in section 211B.37
Probable cause determination in the complaint of Mueller regarding Matt Entenza for Auditor
Probable cause determination in the complaint of Bradley regarding Rich Wright for MN
Findings and order in the Board investigation of Timothy Manthey for Senate

Minnesota

Campaign Finance and Public Disclosure Board

Date: 9/30/2014

To: Board members

From: Gary Goldsmith, Executive Director **Telephone:** 651-539-1190

Re: Referral to Attorney General – Minnesotans for Benjamin Kruse

Minnesotans for Benjamin Kruse has two compliance matters currently outstanding:

- The Committee has yet to file a 2013 Year-end Report of Receipts and Expenditures. The late filing fee reached its maximum of $1,000 on March 31, 2014, and the civil penalty reached its maximum of $1,000 on April 26, 2014.
- The Committee has yet to file an amended 2012 Year-end Report of Receipts and Expenditures to reconcile 9 contributions. The late filing fee reached its maximum of $100 on December 20, 2013, and the civil penalty reached its maximum of $1000 on May 19, 2014.

The course of dealing between staff and the Committee in these matters is detailed in the Board's most recent letter dated September 19, 2014. Numerous letters have been sent to Mr. Kruse and staff has attempted to contact Mr. Kruse by phone. Mr. Kruse has not responded to any staff contact.

In addition to the current matters before the Board, the Committee has $500 in outstanding fines for a 2012 election year EIS, a 2012 pre-primary-election report, and a 2012 pre-general-election report.

Staff request that the Board refer this matter to the Attorney General to compel the filing of the missing reports and to collect the $3,600 in outstanding fines. In addition, staff recommend that the Board assess a civil penalty of up to $3,000 for the willful failure to file an amended 2012 year-end report. Staff recommend that the Board assess this civil penalty against Mr. Kruse personally, not against the Committee. If assessed, staff would also request that this civil penalty be referred to the Attorney General to be collected with the other accrued fines.

Attachments:
Letter dated September 19, 2014

Minnesota

Campaign Finance and Public Disclosure Board

Date: September 30, 2014

To: Board members

From: Jodi Pope, Legal/Management Analyst **Telephone:** 651-539-1183

Re: Expedited Rulemaking

At its September meeting, the Board approved several modifications to the proposed rules that were based on suggestions received early in the comment period. The adopted modifications did not incorporate comments received near the end of the comment period because there was not enough time before the meeting to adequately review those suggestions.

Staff now has reviewed all of the comments received and has proposed two additional modifications to the proposed rules. One modification removes language in part 4525.0150, subpart 5, that is no longer necessary now that staff reviews will be a form of investigation. The second modification removes the requirement in part 4525.0150, subpart 3, that written statements from complainants and respondents be submitted at least 10 business days before the meeting at which the matter would be heard. As explained in the draft order adopting rules, this 10-day requirement did not accurately reflect the timeline for providing materials to Board members before a meeting.

Also, although the Board removed the email notice requirement in part 4525.0150, subpart 2, at the September meeting, members asked to revisit this issue at the October meeting. Staff continues to recommend against making the email notice a legal requirement at this time, although the Executive Director will continue to use email as an additional form of notice as a matter of office operating policy.

The next step in the process is for the Board to decide whether to make the two new modifications to the proposed rules and whether to reinstate the email notice requirement. The Board then must adopt the final version of the rules and authorize the Executive Director to take the actions necessary to obtain approval from the Revisor of Statutes, the Governor, and the Office of Administrative Hearings.

Four documents are attached to this memo. The first is a 9/4/14 rule draft from the Revisor. This document shows the proposed modifications to the rule language that was published in the State Register on July 28, 2014. The proposed modifications include the two new staff suggestions. The second document is a draft order adopting the expedited rules. This document describes the modifications that have been proposed and explains why these changes do not make the rules substantially different from the rules as published in the State Register. The draft form for the Governor's Office is a condensed version of the draft order adopting rules. The Governor and his staff use the information on this form to determine whether the Governor should veto the rules. The final document is a draft Certificate of Board Resolution.

Attachments
9/4/14 draft rules
Draft Order Adopting Rules
Draft form for Governor's Office
Draft Certificate of Board Resolution

Campaign Finance and Public Disclosure Board

Adopted Expedited Rules Governing Complaints, Staff Reviews, Summary Proceedings, Audits, and Investigations

4525.0100 DEFINITIONS.

[For text of subps 1 to 2, 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 law under the board's jurisdiction; and

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

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

Subp. 3. **Contested case.** "Contested case" means a proceeding conducted under Minnesota Statutes, chapter 14, 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 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. 4. [Repealed, 20 SR 2504]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. [Repealed, 20 SR 2504]

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

4525.0150 GENERAL PROVISIONS.

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

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

Subp. 3. **Opportunity to be heard.** When a provision in this chapter or Minnesota Statutes, chapter 10A, 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 prior to or 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~~ an 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 law 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 name and address of the person making the complaint must be 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.

Subp. 3. [Repealed, 30 SR 903]

Subp. 4. **Oath.** ~~Evidence~~ Evidentiary testimony 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 subps 5 and 6, see M.R.]

4525.0210 DETERMINATIONS PRIOR TO FORMAL INVESTIGATION.

Subpart 1. ~~**Prima facie violation determination.** A prima facie determination is a determination that a complaint is sufficient to allege a violation of Minnesota Statutes, chapter 10A, or another provision of law placed under the board's jurisdiction by Minnesota Statutes, 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~~ 2. **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~~ determination 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~~ 3. **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~~ 4. **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~~ 5. **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; whether the violation has been remedied; 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 basis for the board's determination, 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~~ of the board's determination.

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~~ 6. **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~~ 5, the board must either dismiss the matter without prejudice or ~~offer the respondent the option of resolving the matter through~~ order 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~~ order 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, whether the violation has been remedied, 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.

Subpart 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, that is the subject of a complaint, an investigation, or an audit. 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.

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

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 conciliation agreement.** Subject to board approval under part 4525.0330, a respondent may agree to resolve a matter under staff review by entering into a conciliation 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 CONCILIATION AGREEMENT.

~~Every~~ 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 ~~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~~ 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.

~~An~~ 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 ~~an~~ 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.

4525.0340 SUBMISSION TO BOARD; ~~MATTER~~ BOARD-INITIATED INVESTIGATIONS AND MATTERS 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. ~~If~~ a matter under staff review that is not resolved by conciliation agreement under parts 4525.0320 and 4525.0330~~, the executive director must submit the matter to the board under this part.~~; 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~~, 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.

Subp. 2. **Board action on 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 begin or to continue ~~the~~ a staff review;

B. dismiss the matter without prejudice;

C. order a formal investigation of the matter; or

D. issue findings, conclusions, and an order ~~the respondent to take the actions required to remedy the subject violation and impose a civil penalty if provided for by statute~~ resolving the matter.

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; whether the violation has been remedied; 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~~ an existing 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~~ 3. **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.

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

Subp. 2. [See repealer.]

[For text of subps 3 and 4, 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 and 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 not requested by the board, including sworn testimony. 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.

Subpart 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 law.

Subp. 2. **Respondent's rights.** The executive director must send to each respondent a draft ~~audit report to the~~ of any negative or adverse findings related to that respondent before the board considers adoption of the final audit report. The respondent has the right to respond in writing to the draft 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; and

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

The final audit report may not include any information related to audits that is classified as confidential under Minnesota Statutes, chapter 10A.

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

Minnesota Campaign Finance and Public Disclosure Board

DRAFT ORDER ADOPTING EXPEDITED RULES

Adoption of Expedited Rules Governing Complaints, Staff Reviews, Summary Proceedings, Audits, and Investigations, Minnesota Rules, chapter 4525; Proposed repeal of Minnesota Rules parts 4525.0100, subparts 5 and 6; and 4525.0500, subpart 2; Revisor's ID Number AR4279

BACKGROUND INFORMATION

1. The Campaign Finance and Public Disclosure Board has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law. A copy of the Board's authorization to propose the rules is attached.

2. The agency received four written comments and submissions on the rules. The comments and the Board's responses to those comments are included in the record submitted to the Office of Administrative Hearings. No one requested a hearing. Consequently, no hearing requests were withdrawn. In addition, the law directing the Board to adopt expedited rules did not make a specific reference to Minnesota Statues section 14.389, subdivision 5. Consequently, no hearing was required for this proceeding.

3. Several changes were made to the rule as proposed. These changes fall into the following categories:

A. **Modifications to make staff reviews confidential.** Under the rules as proposed, the executive director had the authority to initiate a staff review when the information on a public report filed with the Board suggested that there had been a violation of Chapter 10A. The Board also could direct the executive director to conduct a staff review in other matters. Because the proposed rules stated that staff reviews were not formal investigations, staff reviews would have been public under the data practices provisions currently applicable to the Board. *See* Minn. Stat. §§ 13.03, subd. 1 (all government data public unless another statute or law classifies data as not public); 10A.02, subd. 11 (d) (hearing before board concerning complaint, investigation, or conciliation agreement is confidential until findings or agreement issued); subd. 11a (if after making public finding or issuing conciliation agreement, Board determines that record contains information that would unfairly injure an individual's reputation if disclosed, Board may return information to individual who provided it or retain information as private for one year and then destroy it).

A staff review was intended to be a quick and informal way to resolve a violation that was apparent on a public report filed with the Board without the Board having to make a formal finding in an investigation concluding that the party had violated Chapter 10A. But as Board members and regulated parties thought more about the rules during the comment period, they became concerned that the public nature of the staff review would be abused for political purposes or would damage unfairly the reputation of the party involved. Members and the regulated parties were particularly concerned that a staff review could begin as a public proceeding but become confidential if the Board later authorized a formal investigation of the matter. Board members and regulated parties also concluded that despite the attempt to distinguish a staff review from a formal investigation in the proposed rules, a staff review really was an investigation and therefore was required to be

confidential from the start of the inquiry under the data practices provisions applicable to Board investigations.

For these reasons, the Board modified the proposed rules to make a staff review a form of investigation. As an investigation, a staff review will be confidential under current data practices laws until it is resolved. This will ensure that a staff review does not start as a public proceeding and then later change into a confidential investigation.

Several modifications to the proposed rules were necessary to implement this change. The most significant changes are 1) specifying that summary proceedings are available only for matters that are the subject of complaints, investigations, and audits; 2) specifying that staff reviews are a form of summary proceeding; 3) specifying that the executive director can begin a staff review only after a preliminary inquiry into a filed report suggests that a violation has occurred (this change allows staff to informally contact committees to determine whether there has been a mistake on a report that can be resolved by amendment or a violation that requires a staff review); 4) specifying that Board consideration of matters under staff review and the conciliation agreements that resolve them must occur in closed meetings; 5) removing a reference to resolving staff reviews by amendment (if a matter is resolved by amendment during a preliminary inquiry, there would be no violation to review); and 6) removing the provisions giving a respondent the right to choose a private investigation over a public staff review because staff reviews now will be a type of investigation and therefore confidential.

The following is a complete list of the modifications required under this category: 4525.0100, subpart 8 (removing formal/informal and investigation/summary proceeding distinctions); 4525.0150, subparts 1(removing formal/informal and investigation/summary proceeding distinctions), 5 (removing formal/informal and investigation/summary proceeding distinctions); 4525.0210, former subparts 7 (remedied is factor), 8 (no option of staff review and remedied is factor); 4525.0220, subpart 1 (definition); 4525.0320, subpart 2 (preliminary inquiry); former subpart 3 (staff reviews no longer resolved by amendment); former subpart 4 (add conciliation before agreement); 4525.0330 (closed meeting requirement; add conciliation before agreement; other changes for clarity); 4525.0340, subpart 1 (add conciliation before agreement, remove public/private meeting distinction); new subpart 2 (clarifying that Board can begin or continue staff review in an investigation and remedied is factor); and 4525.0500, subpart 5 (removing formal/informal distinction).

These modifications do not make the rule substantially different from the proposed rule. The Notice of Intent to Adopt the Expedited Rules stated:

> 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.

Investigations in the form of less formal staff reviews, formal investigations, and the applicable data privacy provisions are "procedures used by the Board for audits and investigations" and the modifications therefore are within the scope of the description in the Notice. Further, the fact that three of the four comments submitted during the comment period argued that staff reviews should be confidential investigations shows that these modifications are logical outgrowths of the contents of the Notice and the comments submitted in response to that Notice. The comments requesting the modification also show that the notice provided fair warning of the potential outcome of the proceeding to the public.

The effects of the modified rules do differ from the effects of the proposed rules because staff reviews will be confidential instead of public. Conducting public staff reviews, however, would have been a significant change from the Board's longstanding practice of conducting confidential investigations. The comments specifically asking for a modification of this provision show that people who would be affected by the rule understood that the rulemaking proceeding could affect their interests. The subject matter of the modified rules also is the same as the subject matter of the proposed rules. These two factors, along with the factors discussed in the paragraph above, outweigh the differing effects factor and show that the modifications do not make the rules substantially different from the proposed rules.

B. **Revisor of Statutes suggestions.** The second group of proposed modifications includes changes suggested by the Revisor of Statutes. Although the Board was able to incorporate one small change suggested by the Revisor, the majority of the Revisor's suggestions were made too late in the process to incorporate them into the proposed expedited rules as published. The first suggestion concerns the proposed language in part 4525.0200, subpart 4, requiring evidence to be given under oath. The Revisor pointed out that testimony, not evidence, typically is given under oath. The suggested modification retains the word "testimony" but uses the word "evidentiary" as a modifier for this term.

The Revisor also said that part 4525.0210, subpart 7, directing the executive director to notify the respondent of the Board's probable cause determination had no triggering event for the sending of this notice. The first paragraphs of subpart 7 specify that the triggering event for sending the notice is the Board's probable cause determination. But the notice language in subpart 7 is different from the language in subparts 6 and 8 requiring notice to be sent of the Board's determination that a complaint does not establish probable cause or does not warrant investigation. Using similar language for similar requirements makes a rule easier to understand. Consequently, the notice provision identified by the Revisor in subpart 7 is being modified to use language similar to that used for the notice requirements in subparts 6 and 8.

The changes to parts 4525.0200, and 4525.0210 described above do not make the proposed rules substantially different. Taking testimony and sending notices both are procedures used by the Board for audits and investigations and these changes therefore are within the scope of the matter announced in the Notice of Intent to Adopt. Further, when preparing proposed rules for

publication, the Revisor often suggests changes to improve the clarity of a proposed rule and to make its provisions consistent. These changes therefore are a logical outgrowth of the Revisor's comments and the rulemaking process. Most important, these modifications do not change the effect of the proposed rules; they simply clarify provisions in the rules.

The Revisor also noted that the use of the word "sufficient" in the definitions of prima facie determination and probable cause determination in part 4525.0210, subparts 1 and 5, might not be specific enough to describe the criteria required when making these decisions. Two of the comments received during the comment period also questioned the validity of the probable cause definition.

It has been very difficult to craft a definition of a probable cause determination that adds anything helpful or meaningful to the statutory description of this decision. *See* Minn. Stat. § 10A.02, subd. 11 (a) (establishing probable cause determination for complaints). In addition, the rule definition of prima facie determination merely repeats the statutory definition of this term. *See* Minn. Stat. § 10A.01, subd. 32a (definition of prima facie determination). To avoid expanding or contracting the meaning of the statutory description of the term "probable cause determination" and to avoid giving the Board too much discretion in making this determination, the definition of probable cause determination in part 4525.0210, subpart 5, has been removed from the rules. To avoid repeating the statute and to be consistent with the treatment given to the probable cause determination, the definition of prima facie determination in part 4525.0210, subpart 1, also has been removed. The subparts in part 4525.0210 have been renumbered to reflect these changes.

These modifications do not make the rules substantially different. Prima facie and probable cause determinations both are procedures used by the Board for audits and investigations and these changes therefore are within the scope of the matter announced in the Notice of Intent to Adopt. Further, the fact that two commenters asked for changes to the probable cause determination language shows that the modifications are a logical outgrowth of the contents of the Notice and that the public had fair warning that the final rule could include modifications to these definitions. In any event, both terms are included in Minnesota Statutes Chapter 10A and the statutory descriptions of these terms would have prevailed over the proposed rule provisions. Consequently, removing the definitions from the rules does not change their effect.

C. **Modifications suggested by recent experience implementing the new statutory provisions regarding audits and investigations.** The implementation of the new prima facie, probable cause, and audit requirements in Minnesota Statutes section 10A.02, subdivisions 10 and 11, has shown that some proposed rule provisions need to be modified. For example, consistently using the word "determination" to refer to the document produced after a prima facie determination and the word "order" to refer to the document produced after a probable cause decision in part 4525.0210, subparts 3 and 4, will help the public to differentiate between these two similar decisions made early in an investigation of a complaint.

These modifications do not make the rule substantially different because prima facie and probable cause determinations both are procedures used by the Board for audits and investigations and these changes therefore are within the scope of the matter announced in the Notice of Intent to Adopt. More importantly, these modifications are simply changes in terminology that do not alter the effects of the proposed rules.

As proposed, part 4525.0150, subpart 2, required notices to be sent by both electronic and United States mail. The Board has found that the email addresses provided by registered entities often are incorrect and has not yet implemented the use of email for any official notice. Further, Minnesota Statutes Chapter 10A does not provide for the use of email for any required notice. Until the use of email is incorporated into Chapter 10A as an official substitute for United States mail, the Board believes that its use should continue to be through practice rather than mandated by rule. Consequently, the email notice requirement has been removed from the proposed rules.

This modification does not make the rules substantially different because sending notices is a procedure used by the Board for audits and investigations and therefore the modification is within the scope of the matter announced in the Notice of Intent to Adopt. The Notice also referred to the new statutory procedures governing audits and investigations. When an agency implements a new statute, it often discovers that the implementation cannot proceed precisely as originally designed and that it must modify its initial plan. The modifications to the notice provision therefore are a logical outgrowth of the contents of the Notice of Intent to Adopt. Finally, the modification does not change the effects of the proposed rules because registered entities will continue to receive notices by United States mail as they do under the Board's current practice.

As proposed, part 4525.0210, subpart 2, provided that the notice of the prima facie determination had to state that the respondent was not permitted to contact any Board member directly about the complaint or prima facie determination. This provision was intended to prevent ex parte contact with the Board member making the prima facie determination. However, the proposed rules did not state that a respondent could not contact a Board member. Instead, the proposed rules only provided that the notice of prima facie determination had to state that the respondent could not contact Board members. This was a case of a substantive rule being included in a notice requirement. To provide adequate notice of a respondent's rights in a Board investigation, part 4525.0210, subpart 2, needed to be revised.

When considering how to revise this subpart, the Board noted that it has not in the past had problems with respondents contacting Board members. Upon further consideration, it seemed to Board members that even suggesting that this was a possibility could be counterproductive. The Board therefore decided to remove the no contact language from the proposed rules.

This modification does not make the rules substantially different because the content of the notice of prima facie determination is part of the procedures used by the Board for investigations and audits and the modification therefore is within the scope of the matter announced in the Notice of Intent to Adopt. Further, as an agency reviews a rule during the comment period, it is not unusual for the agency to find a provision that does not actually accomplish its intended purpose and to correct that provision. Consequently, the modification here is a logical outgrowth of the comment period required by the Notice of Intent to Adopt. Finally, the effects of the modified rule arguably are similar to the effects of the proposed rule because a substantive no contact requirement probably could not have been enforced, particularly when it was included only in a notice provision.

New language in Minnesota Statutes section 10A.02, subdivision 10 (a), now provides that the Board must conduct audits within the limits of its available resources and that it must issue a

final report after conducting an audit. After conducting a public subsidy audit which had multiple respondents, some of whom had no negative findings, the Board realized that the proposed rule provisions requiring "a respondent" to receive an entire draft audit report raised administrative and data privacy issues. Part 4525.0550, subpart 2, therefore has been modified to limit the information sent to each respondent in an audit to a draft of any negative or adverse findings related to that respondent.

This modification does not make the rules substantially different because an audit report is one of the procedures used by the Board for audits and investigations and the modification therefore is within the scope of the matter announced in the Notice of Intent to Adopt. Further, as discussed above, the Notice referred to the new statutory procedures governing audits and investigations. When an agency implements a new statute, it often discovers that the implementation cannot proceed precisely as originally designed and that it must modify its initial plan. The modifications to the requirements for circulating a draft audit report therefore are a logical outgrowth of the contents of the Notice of Intent to Adopt. Finally, because the data privacy statutes would have prevailed over the proposed rule provisions to prevent the entire draft audit report from being sent to every respondent, the effects of the modified rules do not differ from the actual effects of the proposed rules.

Finally, in reviewing proposed part 4525.0340, staff realized that additional language was needed in the title and subpart 1 to clarify that this part also applies to Board-initiated investigations; that dividing subpart 1 into two subparts would improve readability; that further dividing subpart 1 into two items would improve readability; and that item D could be amended to more clearly state the Board's intent. These modifications do not make the rules substantially different because they simply are technical changes that do not change the meaning or the effect of the proposed rules.

D. **Modifications suggested by Senator Newman.** Senator Scott Newman suggested that part 4525.0210, subpart 7, require the Board to include the reasons for its decision in the order initiating the formal investigation of a complaint. As Senator Newman discovered, the language in subpart 7 regarding the content of the probable cause order is different from the language in subparts 6 and 8, which requires orders dismissing complaints for lack of probable cause or determining that formal investigations are not warranted to include the reasons for the decision. As discussed above, using similar language for similar requirements makes a rule easier to understand. In addition, entities receiving orders in investigations should be told the reasons for the Board's decisions. Consequently, language has been added to part 4525.0210, subpart 7, requiring the Board to include the reasons for its decision in the order initiating the formal investigation of a complaint.

The modification does not make the rules substantially different because orders issued during an investigation are procedures used by the Board in audits and investigations and the modification therefore is within the scope of the matter announced in the Notice of Intent to Adopt. Further, the fact that a commenter suggested this change shows that the modification is a logical outgrowth of the contents of the Notice and the comments submitted in response to that Notice. Senator Newman's request for modification also shows that the notice provided fair warning of the potential outcome of the proceeding to the public. Finally, although slightly different, the effects of the modified rules are an improvement over the effects of the proposed rules because the parties

would receive an order under both versions of the rules but the order sent under the modified rules will contain more information.

E. **Modification suggested by Representative Sanders.** Representative Tim Sanders questioned the language in part 4525.0150, subpart 3, that requires written statements to be submitted to the Board at least ten business days before the applicable Board meeting. This provision was intended to ensure that written statements were submitted in time to meet the new statutory deadline for distributing meeting materials to Board members. *See* Minn. Stat. § 10A.02, subd. 8 (Board shall vote on matter only if matter was placed on agenda and relevant information distributed to members at least seven days before meeting).

Minnesota Statutes section 10A.02, subdivision 8, however, also provides that the Board may vote on a matter that doesn't meet the seven-day requirement by majority consent of the members. Consequently, if a complainant or a respondent submitted a written statement at any time before a Board meeting, copies of the statement would have to be submitted to the members so that they could decide whether to consider the statement by majority consent. The ten-day requirement in proposed part 4525.0150, subpart 3, therefore did not accurately reflect the new procedures used by the Board. The subpart also did not contemplate the fact that a party might bring a statement directly to the Board meeting. Part 4525.0150, subpart 3, therefore has been modified to provide that a complainant or a respondent may submit a written statement at or prior to the meeting at which the matter will be considered.

This modification does not make the rules substantially different because the submission of written statements to the Board is a procedure used by the Board for audits and investigations and the modification therefore is within the scope of the matter announced in the Notice of Intent to Adopt. Further, the fact that a commenter suggested this change shows that the modification is a logical outgrowth of the contents of the Notice and the comments submitted in response to that Notice. The request for modification also shows that the notice provided fair warning of the potential outcome of the proceeding to the public. Finally, the effects of the modified rule do not differ from the actual effects of the proposed rule because the statutory requirements for providing meeting materials to Board members would have prevailed over the rule provision and Board members therefore would have received late statements despite the provision in the proposed rules.

F. **Modifications not made.** The Board did not adopt all of the modifications suggested by the commenters. The Board's reasons for not adopting a substantive suggestion are included in the Board's response to the commenter.

5. The rules are needed and reasonable. Although a Statement of Need and Reasonableness is not required for expedited rules, the Board prepared a brief explanation of the proposed expedited rules. This document is included with the documents submitted to the Office of Administrative Hearings for review.

6. The Board adopted the rules at its meeting on October 7, 2014, a quorum was present, and the undersigned was authorized to sign this order.

ORDER

The above-named rules, in the form published in the State Register on July 28, 2014, with the modifications as indicated in the Revisor's draft, file number AR4279, dated 09/04/14, are adopted under the authority in Minnesota Statutes section 10A.02, subdivisions 10 and 13.

_____ _____

Date

Gary Goldsmith, Executive Director
Campaign Finance and Public Disclosure Board

2014 Administrative Rule
Final Rule Form

Revisor's ID Number: AR4279

Campaign Finance and Public Disclosure Board

October 7, 2014

Submitting Agency: _____ Date: _____

Jodi Pope Legal/Management Analyst

Rule Contact: _____

Jodi.pope@state.mn.us 651-539-1183

E-mail Address: _____ Phone #: _____

Title: (Short descriptive title)	Expedited Rules governing procedures for investigations and audits
Chapter number(s):	4525
Comments/controversies received since Notice of Intent to Adopt:	During the comment period, one potential issue arose regarding the confidentiality of a new process called a staff review. The proposed rules as published established an informal review process that could be used to quickly resolve violations disclosed on publically-filed campaign finance reports. Under the proposed rules, these staff reviews were not investigations and therefore were public under the data privacy laws. Board members were concerned, however, that the public nature of a staff review could be abused for political purposes. Members also came to believe that a staff review essentially was an investigation and therefore was subject to the confidentiality provisions applicable to investigations. Although members of the public liked the informal nature of the new staff review process, the resulting speed with which a review could be completed, and the fact that a matter could be resolved without a finding of a violation, they also were concerned about the potential for abuse if these reviews were public. Members of the public also could not see any difference between a staff review and an investigation. In response to these concerns, the Board modified the proposed rules. The Board retained the concept of a staff review because this process will allow some matters to be resolved more quickly and through agreement rather than findings. The Board, however, modified the proposed rules to specify that a staff review was a type of investigation and therefore was subject to the same confidentiality provisions applicable to investigations. Consequently, staff reviews will not be public until they are resolved.
If a hearing was requested explain why and attach ALJ Report:	No hearing was requested.

List changes from draft rules proposal:	1. **Modifications to make staff reviews confidential.** As discussed above, the Board modified the proposed rules to make staff reviews confidential. Several modifications were necessary to implement this change. The most significant changes are 1) specifying that summary proceedings are available only for matters that are the subject of complaints, investigations, and audits; 2) specifying that staff reviews are a form of summary proceeding; 3) specifying that the executive director can begin a staff review only after a preliminary inquiry into a filed report suggests that a violation has occurred (this change allows staff to informally contact committees to determine whether there has been a mistake on a report that can be resolved by amendment or a violation that requires a staff review); 4) specifying that Board consideration of matters under staff review and the conciliation agreements that resolve them must occur in closed meetings; 5) removing a reference to resolving staff reviews by amendment (if a matter is resolved by amendment during a preliminary inquiry, there would be no violation to review); and 6) removing the provisions giving a respondent the right to choose a private investigation over a public staff review because staff reviews now will be a type of investigation and therefore confidential. Here is a complete list of the modifications made under this category: 4525.0100, subpart 8 (removing formal/informal and investigation/summary proceeding distinction); 4525.0150, subparts 1 (removing formal/informal and investigation/summary proceeding distinction), 5 (removing formal/informal and investigation/summary proceeding distinction); 4525.0210, former subparts 7 (remedied is factor), 8 (no option of staff review and remedied is factor); 4525.0220, subpart 1 (definition); 4525.0320, subpart 2 (preliminary inquiry); former subpart 3 (staff reviews no longer resolved by amendment), former subpart 4 (add conciliation before agreement); 4525.0330 (closed meeting requirement, add conciliation before agreement, other changes for clarity); 4525.0340, subpart 1 (add conciliation before agreement, remove public/private meeting distinction); new subpart 2 (clarifying that Board can begin or continue staff review in an investigation and remedied is factor); and 4525.0500, subpart 5 (removing formal/informal distinction). 2. **Revisor of Statute suggestions.** Although the Board was able to incorporate one small change suggested by the Revisor of Statutes, the majority of the Revisor's suggestions were made too late in the process to incorporate them into the proposed expedited rules as published. The first suggestion concerns the proposed language in part 4525.0200, subpart 4, requiring evidence to be given under oath. The Revisor pointed out that testimony, not evidence, typically is given under oath. The Board modified the rules to use the word "evidentiary" as a modifier for the term "testimony." The Revisor also said that part 4525.0210, subpart 7, directing the executive director to send notice of the Board's probable cause determination had no triggering event for the sending of this notice. The triggering event for sending the notice is in the first paragraphs of this subpart. But the notice language in subpart 7 is different from the language in subparts 6 and 8 requiring notice to be sent of the Board's decision that a complaint does not establish probable cause or does not warrant investigation. Using similar language for similar requirements makes a rule easier to understand. Consequently,

	the notice provision identified by the Revisor in subpart 7 is being modified to use language similar to that used for the notice requirements in subparts 6 and 8. The Revisor also noted that the use of the word "sufficient" in the definitions of prima facie determination and probable cause determination in part 4525.0210, subparts 1 and 5, might not be specific enough to describe the criteria required when making these decisions. Two of the comments also questioned the validity of the probable cause definition. It has been very difficult to craft a definition of a probable cause determination that added anything helpful or meaningful to the statutory description of this decision. Additionally, the rule definition of prima facie determination merely repeated the language of the statute. To avoid expanding or contracting the meaning of the statutory term "probable cause determination" and to avoid giving the Board too much discretion, the Board removed the definition of a probable cause determination from the rules. To avoid repeating the statute and to be consistent with the treatment given to the probable cause determination, the definition of prima facie determination also was removed. The subparts in part 4525.0210 were renumbered to reflect these changes. 3. **Modifications suggested by recent experience implementing the new statutory provisions regarding audits and investigations.** The implementation of the new prima facie, probable cause, and audit requirements in the new statute has shown that some proposed rule provisions need to be modified. For example, consistently using the word "determination" to refer to the document produced after a prima facie determination and the word "order" to refer to the document produced after a probable cause decision will help the public to differentiate between these two similar decisions made early in an investigation of a complaint. Proposed part 4525.0150, subpart 2, required notice to be sent by both electronic and United States mail. The Board has found that the email addresses provided by registered entities often are incorrect and has not yet implemented the use of email for any official notice. Chapter 10A does not provide for the use of email for any required notice. The Board determined that until the use of email is incorporated into Chapter 10A as an official substitute for United States mail, the use of email for notices should continue to be through practice rather than mandated by rule. As proposed, part 4525.0210, subpart 2, required the notice of the prima facie determination to state that the respondent was not permitted to contact any Board member directly about the complaint or prima facie determination. This provision was intended to prevent ex parte contact with the Board member making the prima facie determination. However, the proposed rules did not state that a respondent may not contact a Board member. Instead, the rules stated that the notice of prima facie determination must notify the respondent that the respondent may not contact Board members. This was a case of a substantive rule being buried in a notice requirement. The Board has not in the past had problems with respondents contacting Board members and it seemed to members that suggesting that this is a possibility could be counterproductive. The Board therefore removed this requirement from the proposed rules.

After conducting the public subsidy audit which had multiple respondents, some of whom had no negative findings, the Board realized that the proposed rule provisions requiring "a respondent" to receive an entire draft audit report raised administrative and data privacy issues. The Board therefore amended part 4525.0550 to limit the information sent to each respondent in an audit to a draft of any negative or adverse findings related to that respondent.

Finally, in reviewing proposed part 4525.0340, Board staff realized that additional language was needed to clarify that this part also applies to Board-initiated investigations; that dividing subpart 1 into two subparts would improve readability; that further dividing subpart 1 into two items would improve readability; and that item D could be amended to more clearly state the Board's intent. The Board adopted these changes to the proposed rules.

4. **Modification suggested by Senator Newman.** Senator Scott Newman suggested that part 4525.0210, subpart 7, require the Board to include the reasons for its decision in the order initiating the formal investigation of a complaint. As Senator Newman discovered, the language in subpart 7 regarding the content of the order is different from the language in subparts 6 and 8, which requires orders dismissing complaints for lack of probable cause or determining that formal investigations are not warranted to include the reasons for the decision. As discussed above, using similar language for similar requirements makes a rule easier to understand. In addition, entities receiving orders in investigations should be told the reasons for the Board's decisions. The Board therefore added this language to part 4525.0210, subpart 7.

5. Modification suggested by Representative Sanders. Representative Tim Sanders questioned the language in part 4525.0150, subpart 3, that requires written statements to be submitted to the Board at least ten business days before the applicable Board meeting. This provision was intended to ensure that written statements were submitted in time to meet the new statutory deadline for distributing meeting materials to Board members. *See* Minn. Stat. § 10A.02, subd. 8 (Board shall vote on matter only if matter was placed on agenda and relevant information distributed to members at least seven days before meeting).

Minnesota Statutes section 10A.02, subdivision 8, however, also provides that the Board may vote on a matter that doesn't meet the seven-day deadline by majority consent of the members. Consequently, if a complainant or a respondent submitted a written statement at any time before a Board meeting, copies of the statement would have to be submitted to the members so that they could decide whether to consider the statement by majority consent. The ten-day requirement in proposed part 4525.0150, subpart 3, therefore did not accurately reflect the new procedures used by the Board. The part also did not contemplate the fact that a party might bring a statement directly to the Board meeting. Part 4525.0150, subpart 3, therefore was modified to provide that a complainant or a respondent may submit a written statement at or prior to the meeting at which the matter will be considered.

Commissioner's Signature | Date

THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE

I have reviewed the above information and have approved this administrative rule. The Agency may formally submit this rule to the Office of Administrative Hearings for approval and filing with the Office of Secretary of State.

Governor's Policy Advisor | Date

Minnesota Campaign Finance and Public Disclosure Board

CERTIFICATE OF THE CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD; RESOLUTION ADOPTING RULES

Adopted Expedited Rules Governing Complaints, Staff Reviews, Summary Proceedings, Audits, and Investigations, Minnesota Rules chapter 4525; Proposed Repeal of Minnesota Rules parts 4525.0100, subparts 5 and 6; and 4525.0500, subpart 2; Revisor's ID Number AR4279

I, Deanna Wiener, certify that I am a member and the Chair of the Campaign Finance and Public Disclosure Board, a board authorized under the laws of the State of Minnesota; that the following is a true, complete, and correct copy of a resolution that the Campaign Finance and Public Disclosure Board adopted at a properly convened meeting on October 7, 2014; that a quorum was present; and that a majority of those present voted for the resolution, which has not been rescinded or modified.

> "Resolved, that the Campaign Finance and Public Disclosure Board approved and adopted rules about Complaints, Staff Reviews, Summary Proceedings, Audits, and Investigations in the Revisor of Statutes draft, file number AR4279, dated 09/04/14, identified as Minnesota Rules chapter 4525, under the Board's authority under Minnesota Statutes section 10A.02, subdivisions 10 and13. Gary Goldsmith, the Executive Director of the Campaign Finance and Public Disclosure Board, is authorized to do the following: sign the Order Adopting Rules, modify the rules as needed to obtain the Revisor of Statutes or the Administrative Law Judge's approval of the rules, sign an Amended Order Adopting Rules that includes any rule modifications needed to obtain the Revisor of Statutes or the Administrative Law Judge's approval of the rules, and perform other necessary acts to give the rules the force and effect of law."

_____ _____

October 7, 2014

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

2015 legislative recommendation topics for consideration

Technical

1. Eliminate filing of second election-year report for candidates whose names will not be on the primary election ballot because they did not file for office.

In 2014, section 10A.20, subdivision 2, was amended to exempt candidates from the additional reporting requirements in an election year when their offices or their names would not be on the general election ballot. This amendment would extend that exemption to a report that is due in mid-June for constitutional office and appellate court candidates who did not file for office. This exemption was inadvertently not included in the 2014 legislation.

2. Move subdivision 10 (confidentiality of audit information) in section 10A.09 to section 10A.02.

In 2014, proposed legislation directed the Board to conduct audits of economic interest statements and classified all data related to those audits as confidential until the final audit report was issued. In the adopted legislation, the direction to conduct audits was placed in a section in Chapter 10A that has general applicability but the confidentiality provision was placed in in the economic interest section. To ensure that audit data is confidential until the completion of any audit, the confidentiality provision should be moved to the section that includes the audit language.

3. Clarify the statutory provisions related to release from public subsidy agreement based on opponent's conduct.

The statutory provisions that govern when a candidate is released from the limits in the public subsidy agreement due to the spending or receipts of an opponent are very complicated. Further, the triggering thresholds in the section were not changed from election cycle to election segment when that terminology was adopted in 2013. The intent would be to make the language clearer without changing what we believe to be the present intent and effect.

Staff recommendation: Fix the technical problem, but do not pursue other changes in the 2015 session. The technical change requires only the insertion of the words "election cycle" into one clause of the statute. This should be recommended by the Board. Clarifying this statute will require a significant rewrite of the existing language, even if no substantive change is made. The statute is difficult to understand, but staff has been able to implement it over the past several election cycles. While staff believes that this task should be undertaken, staff also believes that it should be a non-election year (and non-budget year) project where staff and the Board can work on the language over a period of months. For these reasons, staff recommends not pursuing the overall clarification in 2015.

4. Repeal Minnesota Rules 4503.1500, subpart 2.

Section 10A.27, subdivision 8, provides that candidates cannot make loans to their committees that exceed the contribution limits. Minnesota Rules part 4503.1500, subpart 2, however, provides that the unpaid year-end balance of the candidate’s loans to the committee may not exceed the contribution limits. The rule conflicts with the statute and should be repealed.

5. Deal with public subsidy for the case of a vacancy in the nomination.

In 2013, the legislature adopted new provisions governing vacancies in nomination for partisan office. The public subsidy provisions in Chapter 10A would need to be amended to explain how a replacement candidate qualifies for public subsidy and how money appropriated for public subsidy is made available if public subsidy payments have already been made to the replacement candidate's predecessor.

Technical/Policy

6. Increase late filing fee and eliminate grace period for economic interest statement filings.

In the past, the Board has made efforts to increase late filing fees under Chapter 10A from $5 per day to $25 per day.

Recommendation: Do not pursue in 2015 session. The Board did not recommend disclosure of economic interests from the group of local officials serving on soil and water type boards. This legislation was inserted into an environmental budget bill in conference committee without the Board's knowledge or input.

When legislation was introduced in 2013 to add county commissioners and judges to the list of public officials, the Board opposed the legislation. The opposition was primarily based on the recognition that the economic interest statement disclosure requirement is not tailored to the type of official who is required to provide the disclosure. For example, the Executive Director has previously expressed concern about whether the state's interest in providing public knowledge of soil and water conservation district or watershed district officials' holdings in publicly-traded companies is sufficient to justify the infringement on these officials' privacy.

With the addition of hundreds of county commissioners and judges to the disclosure program, phased in over the next five years, this is probably not the best time to increase the late filing fees. Staff also notes that even with the low late filing fee, staff has been successful in obtaining economic interest statements from all officials.

7. Increase late filing fee and eliminate grace period for other filings that remain at the $5 per day late filing fee (lobbyist registration; representation disclosure; and campaign finance registration for principal campaign committees, party units, political committees and funds).

This amendment continues the Board’s efforts to standardize late filing fees at $25 per day and to eliminate the grace period before the late fee begins for a missing report.

8. Fix problem with judicial candidate contribution limits.

When registering committees, judicial candidates are not required to identify the seat for which they are running. In addition, unlike legislative and constitutional offices, judicial seats are not up for election according to a set pattern. Consequently, for non-incumbent judicial candidates, it is not possible to know whether the election segment or the non-election segment contribution limits should apply in any particular 2-year period until after the candidate files to be on the ballot. A fixed limit applicable in every 2-year segment would resolve the problem. The limit for appellate court candidates could be higher than the limit for district court candidates.

9. Establish penalty provisions for violations of Chapter 211B.

Chapter 211B includes authority for the Office of Administrative Hearings to impose a civil penalty for any violation of the chapter. When authority over certain sections of Chapter 211B was transferred to the Board, the penalty provision was not referenced. Consequently, the Board currently has no authority to impose a civil penalty for most of the violations of the sections of Chapter 211B under its jurisdiction (disclaimer, use of campaign funds, corporate contributions).

10. Clarify that the Board's jurisdiction over corporate contributions extends to the prohibition on committees accepting those contributions.

Under section 211B.15, the Board has jurisdiction over corporations that make prohibited political contributions. The prohibition against accepting corporate political contributions, however, is in section 211B.13, subdivision 2, which is not specifically under the Board's jurisdiction. Consequently, while the Board has jurisdiction to enforce the prohibition on *making* corporate contributions, it does not have jurisdiction to enforce the prohibition in *accepting* those same contributions.

11. Clarification of prohibitions on issuing political contribution refund receipts.

Section 10A.322, subdivision 4, makes the willful issuance of a political contribution refund receipt by a candidate who did not sign a public subsidy agreement a misdemeanor. However, there is no penalty for the willful issuance of a receipt to a non-qualified individual (for example, to someone who did not actually donate) by a candidate who did sign a public subsidy agreement. Also the current remedy is limited to criminal prosecution. The statute could be extended to wrongful issuance of receipts by a public subsidy candidate and a civil penalty could be added as a penalty that the Board could impose.

12. Remove language in section 10A.20 giving party units approval of electronic filing standard and requiring Board to withhold publication of party unit reports until the reports from all corresponding party units of other parties are filed.

The provision giving party units approval of the Board's electronic filing standard was adopted before the standard was developed and implemented. Since all party units who had the right to approve the standard are now using it to file electronically, this provision is no longer necessary. The language requiring the Board to hold the reports of certain party units until the reports of all party units of that type have been filed prevents the public from having timely access to filed reports and should also be considered for repeal.

13. Require recipients to report contributors' Board registration numbers and require contributors to report recipients' Board registration numbers on reports filed with Board.

Chapter 10A currently requires donors to provide their Board registration numbers with their contributions but does not require the recipients to include these numbers on their reports. Nor are donors required to report the recipients' Board registration numbers on their reports of contributions made. Requiring donors and recipients to report this information will help to reconcile contributions between entities registered with the Board.

14. Amend reporting statutes to make it clear that if the registration threshold has been met before the end of a reporting period, both registration and reporting are required by the report due date.

Chapter 10A currently gives candidate committees, political committees and funds, and party units 14 days to register with the Board after reaching the registration threshold. If a reporting threshold is met before the report cutoff date by an association not yet required to register, the statutes do not make it clear that the report is, nevertheless, required.

15. Require that subjects of an investigation preserve evidence once notified of a Board investigation.

Nothing in Chapter 10A or Chapter 211B requires the subject of an investigation to preserve evidence that could be relevant to the investigation.

16. Eliminate prohibition on contributions between the caucus committees and their candidates during the legislative session.

The Board has assumed that the prohibition of sessional contributions is intended to prevent groups outside of the legislature from using contributions to influence legislation. The sessional contribution prohibition, however, also applies to contributions between the legislative caucus committees and their candidates. This creates the potential for violations of the campaign finance laws with no apparent benefit to the public. Removing this prohibition would not lead to circumvention of the sessional prohibition by others because neither legislative caucuses nor candidates can accept contributions from lobbyists, political committees or funds, or unregistered associations during the session.

17. Clarify that for purposes of the ban on sessional contributions, the legislative session includes the entire first and last days of the session.

The ban on sessional contributions states that it applies “during” a regular session of the legislature. Typically, however, a legislative session begins sometime in the middle of the first day and ends late in the evening of the last day. This amendment would specify the prohibition on sessional fundraising applies for the entire first day and the entire last day of the session.

18. Deal with use of state resources for constituent services that are reported partly as campaign expenditures.

Chapter 10A provides that expenditures for constituent services are noncampaign disbursements during a non-election year and during an election year up to the date of adjournment sine die of the legislative session. For the 60 days after adjournment sine die, expenditures that would otherwise be considered to be for constituent services are considered to be 50% constituent services and 50% campaign expenditures. After 60 days, expenditures that would otherwise be considered to be for constituent services are considered to be 100% campaign expenditures.

Questions arise each year over how to report the costs related to session wrap-up communications that are prepared by legislative staff at state expense and then distributed by the candidate and reported as a campaign expenditure after adjournment in an election year.

Staff recommendation: Do not pursue in 2015 session. Staff believes that this topic requires close work with caucus leaders and staff before any proposal should be brought forth. The issue will not arise again until 2016, so those conversations could take place during 2015 and if it is agreed that legislative clarification is the best approach, a bill could be introduced in 2016.

19. Deal with transfers between a party unit's state and federal committees, including use of federal funds for state elections, which would result in an in-kind contribution to the state committee.

Chapter 10A treats the transfer of money from a party unit's federal committee to its state committee as a contribution from a unregistered association since federal committees are not typically registered with the Board. As a result, the donor federal committee is required to provide a disclosure statement to the state committee each time it makes such a transfer. However, since the two committees are operated by the same party unit, the recipient technically already has the information that the federal committee is required to provide.

Similarly, a federal committee paying for activities that are for the purpose of influencing state elections would result in an in-kind contribution to the state committee, also resulting in the requirement of a disclosure statement.

Use of federal funds for state election activities occurs regularly because federal law requires political parties to use federal dollars to pay for certain activities (such as salaries for staff who spend 25% of their time on federal activities) even when those activities actually benefit the party's state operations more than its federal operations.

To facilitate this routine and federally mandated use of federal money for certain state expenditures, the Board may wish to recommend that the statutory requirement for the underlying disclosure be eliminated for this limited category of transactions. The federal committee would continue to report to the FEC, so its donors would be known. The federal committee would be shown as the donor for money transferred to the state committee or as the donor of in-kind services when federal money is spent on state election activities.

On the other hand, the Board could recommend a statutory change that would exempt federal party unit committee expenditures on state elections from any disclosure under Chapter 10A.

Staff recommendation: Do not pursue in 2015 session: Staff recommends that we work with state party units and caucuses on a solution and propose any necessary enabling legislation in 2016.

20. Extend right to make unlimited charitable contributions upon termination to political committees or funds.

Section 211B.12 provides that candidate committees can contribute more than $100 to 501(c)(3) charities if the committee dissolves within one year. There appears to be no reason why this provision should not be extended to political committees, political funds, and party units.

21. OAH funding for Chapter 211B violations by Chapter 10A candidates.

See attached memorandum.

22. Review and recommend any changes that may be needed to maintain constitutionality of Chapter 211B "prepared and paid for" disclaimer provisions and the Chapter 10A independent expenditure disclaimer.

Minnesota Statutes section 211B.04 requires campaign material to include a "prepared and paid for" statement of attribution. Section 10A.17 requires a separate disclaimer for independent expenditures. The constitutionality of 211B.04 has been challenged twice in the past. After each challenge, the legislature modified an exemption provision that exempted certain speakers. However, there is no exemption at any threshold for the independent expenditure disclaimer and no exemption at any threshold for the "prepared and paid for" statement if the communication is made less than seven days before an election. In other words an individual spending any amount on an independent expenditure six days before an election would be in violation of both statutes. The statutes also lack an exception for communications where it is impossible or highly impractical to include a disclaimer, for example, campaign buttons and skywriting.

Although these statutes could benefit from a thorough rewriting, staff believes that establishing thresholds that are consistent with registration and reporting thresholds and including a limited exception would be generally noncontroversial and would go a long way toward preserving the constitutionality of these provisions.

Policy

23. Modify prima facie determination for investigations and review language related to probable cause determination.

In 2014, the legislature directed the Board to make prima facie and probable cause determinations for all complaints. The Board's implementation of these provisions has revealed issues that could be resolved with modifications to the prima facie process and the probable cause determination.

24. Clarify data privacy requirements related to investigations.

Staff recommendation: Do not pursue in 2015 session. The changes that the Board will propose to the rules remove many of the questions about what parts of proceedings are confidential and what information is public. Staff believes that more experience with the new statutes and rules is needed before recommendations for further changes should be considered.

25. Changes required by *Seaton v. Wiener.*

At a minimum, legislation should be considered to address the constitutionality of the large giver component of the special source limit.

26. Other changes related to *Seaton v. Wiener*

The Board also may wish to consider the lobbyist, political committee, and political fund components of the special source limit, lobbyist contribution limits in general, and limits on contributions from lobbyists' spouses. A federal district court just enjoined enforcement of Wisconsin's comparable political committee special source limit.

One way to address special source limits would be to make them voluntary conditioned on signing the public subsidy agreement. Funding for the public subsidy general account was originally set at $1,500,000 per election. Due to various cuts over the years, this funding now is set at $1,020,000. If agreeing to special source limits is a condition of receiving public subsidy, the Board may want to recommend an increase in funding for the public subsidy general account to ensure that public subsidy payments are high enough to encourage continued participation in the program.

27. Revisit electioneering communication disclosure, underlying source disclosure, and definition of independent expenditures. To increase chances of passage, a new scope or approach could be considered.

28. Recommendations for improved public official financial disclosure.

This possibly could be coupled with recommendations for more limited disclosure for public officials who serve at the local level.

Minnesota

Campaign Finance and Public Disclosure Board

Date: September 30, 2014

To: Board

From: Gary Goldsmith, Executive Director **Telephone:** 651-539-1190

Re: Costs of funding Office of Administrative Hearings for investigation of Fair Campaign Practices Act complaints related to Chapter 10A entities

The problem in a nutshell:

Pre-2009 law. OAH billed costs of Chapter 10A complaints to the public subsidy general account appropriation – up to $130,000 per biennium was permitted, but it never got that high. Chapter 10A included set-aside language in the public subsidy appropriation and Chapter 211B included the language instructing OAH to charge the public subsidy appropriation.

2009 legislative session (FY 10-11). In 2009 legislation establishing the FY 10-11 budgets, the $130,000 that was part of the public subsidy appropriation was changed to be a direct appropriation to OAH. The public subsidy appropriation was reduced by $130,000. The set-aside language in Chapter 10A was repealed.
Problem #1: The language in Chapter 211B telling OAH to charge against the public subsidy appropriation was not repealed even though OAH was now getting the money by direct appropriation.

2011 legislative session (FY 12-13). The $130,000 direct appropriation to OAH is maintained.
Problem #1: The language in Chapter 211B that required OAH to assess counties for the cost of local elections complaints was put on hold. OAH was to pay the cost of complaints related to local elections from "appropriations made to the agency for this purpose" even though no such appropriations were made. The only appropriation for complaints was the original $130,000 that had been diverted from the public subsidy program to pay the cost of complaints involving Chapter 10A candidates.
Problem #2: The language mandating assessment of the public subsidy appropriation for OAH hearings involving Chapter 10A candidates still was not repealed. However, the OAH recognized that the intent of the legislature was that the $130,000 was to pay for costs of complaints related to Chapter 10A entities and did not assess the public subsidy appropriation
Result: The OAH had to seek a deficiency appropriation of $60,000 from the 2013 legislature, which was granted.

2013 legislative session (FY 14-15). Nothing changes from the 2011 approach. Staff has reached out to OAH for input on whether it will require a deficiency appropriation from the 2015 legislature.
Recommendation: Repeal the language requiring OAH to assess the public subsidy appropriation for the costs of Chapter 10A entity complaints. Provide sufficient OAH direct appropriations to handle all Chapter 211B elections complaints.

The detailed discussion:

Prior to the 2009 legislative session, Minnesota statutes section 10A.31, subdivision 4, read as follows (OAH appropriation in bold):

> Subd. 4. Appropriation. (a) The amounts designated by individuals for the state elections campaign fund, less three percent, are appropriated from the general fund, must be transferred and credited to the appropriate account in the state elections campaign fund, and are annually appropriated for distribution as set forth in subdivisions 5, 5a, 6, and 7. The remaining three percent must be kept in the general fund for administrative costs.
>
> (b) In addition to the amounts in paragraph (a), $1,250,000 for each general election is appropriated from the general fund for transfer to the general account of the state elections campaign fund. **Of this appropriation, $65,000 each fiscal year must be set aside to pay assessments made by the Office of Administrative Hearings under section 211B.37. Amounts remaining after all assessments have been paid must be canceled to the general account.**

This statute provided funding of $65,000 per fiscal year for the OAH to handle complaints for candidates governed by Chapter 10A.

The implementation language was in section 211B.37, as follows (use of OAH appropriation in bold):

> Except as otherwise provided in section 211B.36, subdivision 3, the chief administrative law judge shall assess the cost of considering complaints filed under section 211B.32 as provided in this section. **Costs of complaints relating to a statewide ballot question or an election for a statewide or legislative office must be assessed against the appropriation from the general fund to the general account of the state elections campaign fund in section 10A.31, subdivision 4.** Costs of complaints relating to any other ballot question or elective office must be assessed against the county or counties in which the election is held. Where the election is held in more than one county, the chief administrative law judge shall apportion the assessment among the counties in proportion to their respective populations within the election district to which the complaint relates according to the most recent decennial federal census.

Under this system, the OAH received $130,000 per biennium and at the end of the biennium returned to the general account of the State Elections Campaign Fund any amount not used to administer the Chapter 10A complaints.

The chart below shows how much of the $130,000 appropriation was returned by the OAH each year.

FY05	$24,969.60
FY06	$50,798.06
FY07	$7,779.43
FY08	$44,279.30
FY09	$1,092.20

In 2010, the method and scope of use of the appropriation changed.

Minnesota statutes section 10A.31, subdivision 4 was amended. The statutory language setting aside $65,000 per FY for use by the OAH was removed from section 10A.31 and the amount of the appropriation to the General Account of the State Elections Campaign Fund was reduced by that amount.

In the FY 10-11 budget bill, the OAH budget was increased by $130,000 per biennium and a rider was added to the OAH budget item, as follows:

> $130,000 in the first year is for the cost of considering complaints filed under Minnesota Statutes, section 211B.32. Until June 30, 2011, the chief administrative law judge may not make any assessment against a county or counties under Minnesota Statutes, section 211B.37. Any amount of this appropriation that remains unspent at the end of the biennium must be canceled to the general account of the state elections campaign fund. The base for fiscal year 2012 is $130,000, to be available for the biennium, under the same terms. 2009 Minn. Laws, ch. 101, art.1, §16.
>
> Similar language was included in the OAH budget rider for FY 12-13. 2011 Minn. Laws, 1st Spec. Sess., Ch. 10, art. 1, §9. In the FY 14-15 budget rider, the language was changed slightly by deleting the prohibition in assessing counties. The bill also provided for the $60,000 deficiency in funding for Chapter 211B complaints. The language was as follows:
>
> Campaign Violations Hearings. (a) $130,000 the first year is appropriated from the general fund for the cost of considering complaints filed under Minnesota Statutes, section 211B.32. Any amount of this appropriation that remains unspent at the end of the biennium must be canceled to the general account of the state elections campaign fund. The base for fiscal year 2016 is $130,000, to be available for the biennium, under the same terms.
>
> (b) $60,000 the first year is appropriated from the general fund to cover the fiscal year 2013 costs of campaign violations hearings. This is a onetime appropriation.
> 2013 Minn. Laws, ch. 142, art. 1, §9.

The elimination in the budget rider of the prohibition on the assessment back to counties was possible because section 211B.37, which was the source of the assessment authority, was amended to remove the assessment authority itself, as follows:
Except as otherwise provided in section 211B.36, subdivision 3, the chief administrative law judge shall assess the cost of considering complaints filed under section 211B.32 as provided in this section. Costs of complaints relating to a statewide ballot question or an election for a statewide or legislative office must be assessed against the appropriation from the general fund to the general account of the state elections campaign fund in section 10A.31, subdivision 4. Costs of complaints relating to any other ballot question or elective office must be ~~assessed against the county or counties in which the election is held. Where the election is held in more than one county, the chief administrative law judge shall apportion the assessment among the counties in proportion to their respective populations within the election district to which the complaint relates according to the most recent decennial federal census~~ paid from appropriations to the office for this purpose.
2013 Minn. Laws, ch. 13, art. 2, §75.

A literal reading of section 211B.37 yields the result that the $130,000 that came from the public subsidy appropriation is now available for costs of local elections complaints while state level complaints must still be assessed against the public subsidy appropriation. Staff was involved in these changes and knows that this was not the legislature's intent.

It has been the Board's position that the language requiring assessment against the public subsidy appropriation no longer has any effect since the subject funds are now directly appropriated to the OAH.

Board action

The Board should recommend legislative action to clarify that funding for all OAH elections complaints comes from the appropriation made for that purpose. This would require a repeal of the public subsidy assessment language. The Board should also recommend that the legislature provide adequate direct appropriation funding to the OAH for the handling of elections complaints.

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

PROBABLE CAUSE DETERMINATION

IN THE MATTER OF THE COMPLAINT OF SHARON MUELLER REGARDING THE MATT ENTENZA FOR AUDITOR COMMITTEE:

The complaint alleges that the Matt Entenza for Auditor Committee failed to include the statutorily required disclaimer on five pieces of campaign literature. Although a disclaimer was provided, and the Committee's address was included elsewhere on the literature pieces, complainant alleges that the address must be included within the disclaimer text.

On September 2, 2014, the Board Chair made a determination that the complaint stated a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction.

Minnesota Statutes section 211B.04 requires campaign material to include a disclaimer that prominently states the name and address of the person or committee causing the material to be prepared or disseminated. Section 211B.04 states that the form of disclaimer by a principal campaign committee is: "Prepared and paid for by the (name) committee, (address)."

The disclaimer on the pieces on the subject literature stated, "Paid for by Matt Entenza for Auditor." On the other side of the pieces, the address "PO Box 4503, St. Paul, MN, 55104" was listed - the Committee's registered address on file with the Board.

Findings:

1. The Matt Entenza for Auditor Committee distributed campaign literature pieces prior to the 2014 primary election.
2. The campaign literature pieces contained a disclaimer stating "Paid for by Matt Entenza for Auditor" on the front of the piece and the committee's address on the back of the piece.

Conclusions:

1. Probable cause exists to believe that the Matt Entenza for Auditor Committee violated section 211B.04 of the Minnesota Statutes because the disclaimer on the campaign literature pieces was technically not in the statutorily required form.
2. No penalty is provided for by statute for a violation of the disclaimer provision.
3. Because the campaign literature pieces have been distributed and the Board can no longer order compliance with the disclaimer provision, and because no further penalty is provided for by statute, the Board concludes that it should commit no further resources to investigating this matter.

Order:

1. The complaint in the above matter is dismissed.

Deanna Wiener

Dated: Oct 7, 2014

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

PROBABLE CAUSE
DETERMINATION

IN THE MATTER OF THE COMPLAINT OF FRAN BRADLEY REGARDING THE RICH WRIGHT FOR MINNESOTA COMMITTEE:

The complaint alleges that the Rich Wright for Minnesota Committee failed to include the statutorily required disclaimer on one piece of campaign literature, as well as on its website.

On September 2, 2014, the Board Chair made a determination that the complaint stated a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction.

Minnesota Statutes section 211B.04 requires campaign material to include a disclaimer that prominently states the name and address of the person or committee causing the material to be prepared or disseminated. Section 211B.04 states that the form of disclaimer by a principal campaign committee is: "Prepared and paid for by the (name) committee, (address)."

The piece of literature provided to the Board and a web archive of the Committee's website on July 30, 2014, do not contain a disclaimer. The Committee's website now contains a disclaimer stating "Prepared and paid for by Rich Wright for Minnesota, PO Box 552, Rochester, MN 55903."

Findings:

1. The Rich Wright for Minnesota Committee distributed a campaign literature piece and maintained a website prior to the 2014 primary election.
2. The literature piece did not contain a disclaimer.
3. The website, as of July 30, 2014, did not contain a disclaimer.

Conclusions:

1. Probable cause exists to believe that the Rich Wright for Minnesota Committee violated section 211B.04 of the Minnesota Statutes because the campaign literature piece and the Committee's website did not contain a disclaimer in the statutorily required form.
2. No penalty is provided for by statute for a violation of the disclaimer provision.
3. Because the campaign literature piece has been distributed and the Committee's website has been amended to include the statutorily required disclaimer, the Board can no longer order compliance with the disclaimer provision. Because no further penalty is provided for by statute, the Board concludes that it should commit no further resources to investigating this matter.

Order:

1. The complaint in the above matter is dismissed.

Deanna Wiener

Dated: Oct 7, 2014

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

Findings, Conclusions, and Order in the Matter of the Timothy Manthey for Senate Committee

Summary of the Facts

The investigation of the Timothy Manthey for Senate Committee (the Committee) was initiated by the Campaign Finance and Public Disclosure Board on February 5, 2013, in response to a staff request. The purpose of the investigation was to determine whether the Reports of Receipts and Expenditures filed by the Committee were accurate, and whether the Committee's funds had been used for purposes consistent with the requirements of Chapter 10A and Minnesota Statutes section 211B.12.

The Committee came under staff scrutiny during the administrative termination process required for inactive candidate committees.

Statutory Authority

A candidate must register a campaign committee with the Board once the candidate has raised more than $750 in contributions. Minn. Stat. §§ 10A.105, subd. 1; 10A.14, subd. 1. At the time of registration the committee must establish a bank account that will be used for all financial transactions of the committee. Minn. Stat. §§ 10A.11, subd. 4; 10A.14, subd. 2. A candidate may purchase an item or service for the committee with personal funds, but when that occurs the purchase is either an in-kind contribution to the committee, or an expenditure that will be reimbursed by the committee at some future date. Minn. Stat. § 10A.20, subd. 3. In either case a committee is required to report in-kind contributions and both paid and outstanding reimbursements to the candidate on the next Report of Receipts and Expenditures filed with the Board. The Report of Receipts and Expenditures is a periodic report that provides public disclosure of all the committee's financial activity, including its available cash balance and outstanding obligations. *Id.* Knowingly filing a false report with the Board is punishable by a civil penalty of up to $3,000 imposed by the Board and referral for prosecution of a gross misdemeanor. Minn. Stat. § 10A.025, subd. 2.

The responsibility to keep records of a committee's financial activity is found in Minnesota Statutes section 10A.025, subdivision 3:

> A person required to file a report or statement or who has accepted record-keeping responsibility for the filer must maintain records on the matters required to be reported, including vouchers, canceled checks, bills, invoices, worksheets, and receipts, that will provide in sufficient detail the necessary information from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness. The person must keep the records available for audit, inspection, or examination by the board or its authorized representatives for four years from the date of filing of the reports or statements or of changes or corrections to them.

Of note is that a committee must maintain financial records for only four years. However, if a committee amends a report initially filed more than four years ago, the Board assumes that the

amendment is based on information that can be documented, and may require access to the records upon which the amendment is based.

Typically, a candidate's committee is active for as long as the candidate either is elected to serve in office, or actively seeks election to a state level office. Most candidates voluntarily terminate their committees soon after leaving office or deciding that they will not seek office in the foreseeable future. A candidate is not allowed to leave a campaign committee open without activity for an unlimited amount of time. Minnesota Statutes section 10A.245, subdivision 1, provides that a candidate's committee is "inactive" when six years have expired from when the candidate last held elective office, or six years have expired after the last election at which the candidate filed to appear on the ballot.

Minnesota Statutes section 10A.245, subdivision 2, provides that the Board may administratively terminate a candidate's committee when the committee is inactive. The Board provides written notification to the candidate that the committee is deemed inactive and that the committee must disburse its remaining assets and terminate within sixty days of the notice. If a committee has over $100 in assets it must file a termination report that discloses how the assets were disbursed.

The Board will consider a request to allow an inactive candidate's committee to remain registered past the six year time limit. The request is typically granted if the Board is convinced that the candidate does intend to file for office at an upcoming election, and if the committee provides a bank statement to verify that the committee has the funds it reported on the most recent report to the Board.

All committee assets must be used for the purposes provided for in Minnesota Statutes section 211B.12, and consistent with the provisions of Chapter 10A. Minnesota Statutes section 211B.12 lists permitted uses of money collected for political purposes, and further limits the use of those funds with a general prohibition that states, "Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use."

The legislature gave the Board the authority to compare the expenditures reported by candidates for state-level office to the provisions of Minnesota Statutes section 211B.12, in May 2013. 2013 Minn. Laws, ch. 138, art. 1, § 13. Prior to that time the Board's review of the appropriateness of expenditures was limited to determining whether expenditures were accurately reported.[1]

At the same time that the Board was given authority to investigate the possible inappropriate use of committee funds it was given a mechanism to recover funds that were used for inappropriate purposes. In part, Minnesota Statutes section 10A.02, subdivision 11, now provides:

> The board may bring legal actions or negotiate settlements in its own name to recover money raised from contributions…No action may be commenced unless the board has made a formal determination, after an investigation, that the money was raised for political purposes as defined in section 211B.01, subdivision 6, and the money was used for purposes not permitted under this chapter or under section 211B.12….Any funds

[1] See Findings and Order in the Matter of the Complaint of Nathan Haase Regarding the Cy Thao Campaign Committee at www.cfboard.state.mn.us/bdinfo/investigation/2-2-2010_Cy_Thao.pdf.

recovered under this subdivision must be deposited in a campaign finance recovery account…

Timothy Manthey for Senate Committee Activities

On April 6, 2000, Timothy Manthey registered the Timothy Manthey for Senate Committee. Mr. Manthey filed to be on the ballot as a candidate for Senate District 44 in 2000. During 2000 the Committee received $7,481.65 in contributions from individuals, $2,850 from political party units, $1,528.56 in a loan from the candidate, and a $14,743.35 public subsidy payment for total receipts of $27,505.21. During the election year the Committee became obligated for $18,636 in campaign expenditures and noncampaign disbursements. The Committee ended 2000 with a reported $15,377 ending cash balance and $6,498 in unpaid bills.

In the year-end Reports of Receipts and Expenditures for the years 2001 through 2004 the Committee reported that no contributions were received, and that payments on the unpaid bills from 2000 and other new expenditures had reduced the ending cash balance to a reported $7,323.87 on December 31, 2004. In 2005 and 2006 the Committee filed "no change" reports stating that the committee had no financial activity during either year, and that the cash balance for the Committee remained $7,323.87.

Because Mr. Manthey did not file for office in 2004 or 2006 he was notified on May 3, 2007, that his committee was deemed inactive and would need to terminate within 60 days. On August 21, 2007, Mr. Manthey asked the Board to allow the Committee to retain active status as he intended to run for office after redistricting in 2010. Mr. Manthey provided a bank statement verifying that the Committee's account contained the reported $7,323.87. The Board allowed the Committee to remain active through the 2010 election contingent upon the payment of $1,146.60 in late fees, civil penalties, and service of process fees accumulated due to the Committee's late filing of the 2003 year-end Report of Receipts and Expenditures. A payment of $1,146.60 made on the Committee's account was received on November 12, 2007. This reduced the Committee's ending cash balance to a reported $6,177.27 as of December 31, 2007.

In 2008, 2009, and 2010, Mr. Manthey filed "no change" reports. In, 2008 the reported year-end cash balance remained $6,177.27, but in 2009 and again in 2010 the reported year-end balance was $6,107.27. Staff did not notice or question the change in the cash balance in 2009; for the purpose of this investigation staff did not require Mr. Manthey to explain the $70 change in the ending cash balance between 2008 and 2009.

Mr. Manthey did not file to appear on the ballot for office in 2010. Staff notified Mr. Manthey on September 9, 2011, that the Committee was again in inactive status and that the termination of the Committee was now required.

On February 2, 2012, Mr. Manthey filed a 2011 year-end report that was marked as a termination report and indicated that the Committee had no cash balance. The report did not include any information regarding the disposal of the Committee's funds. Staff notified Mr. Manthey by letter that the termination report was not complete because it did not disclose how the Committee had disposed of the $6,077.27.

Mr. Manthey responded by email on February 3, 2012, which stated, "The remaining funds from the $6107.12 [sic] were used to pay facility rent, phone, fax, internet, postage, printing and replacement of select equipment used in the office." Staff responded that the email was not

sufficient disclosure and that a full report was required. No further correspondence from Mr. Manthey was received regarding the termination report.

At this point staff became concerned that there had been a diversion of money raised by the Committee to personal use. As the Committee had not been used in an active campaign for more than 10 years, and had been completely inactive for the years 2008 through 2011, there seemed to be no justification for facility rental or any of the other expenses Mr. Manthey mentioned in his email. By letter dated January 3, 2013, staff notified Mr. Manthey that the issues of termination and the use of the Committee's funds had not been resolved, and that staff would request authority to launch a formal investigation and audit if further information was not forthcoming.

On January 31, 2013, Mr. Manthey submitted a 2012 year-end Report of Receipts and Expenditures marked as "no change" with an available cash balance of $99.

At the February 5, 2013, Board meeting staff requested and received authority to start a formal investigation into the accuracy of the Committee reports, and whether Committee funds had been used for inappropriate purposes.

After receiving notification of the investigation Mr. Manthey contacted staff and requested an informal meeting on the investigation. Staff met with Mr. Manthey on April 30, 2013. The meeting was not a deposition and not conducted under oath. During the meeting Mr. Manthey provided a bank statement for the Committee's account which showed a balance of $6,107.27 on December 30, 2011. Mr. Manthey stated that he had closed out the account in 2012 and transferred the money to his personal account. Mr. Manthey further stated that he believed that the transfer was appropriate and legal because of unpaid reimbursements the Committee owed him for the use of fax, phone, facility rental, and other similar costs.

By letter dated June 28, 2013, staff laid out the issues to be resolved before the investigation could be closed and the termination of the Committee completed. The letter explained that if Mr. Manthey was now claiming additional expenditures by the Committee over a number of years the accuracy of the reports for those years was now in question. All Reports of Receipts and Expenditures filed with the Board were signed by Mr. Manthey and certified by him as true and complete as of the date they were filed.

This letter also notified Mr. Manthey that the Board now had the authority to enforce the provisions of Minnesota Statutes section 211B.12 and to recover misused committee funds. The letter further explained that for each item now claimed for reimbursement Mr. Manthey would need to provide documentation in the form of invoices or receipts showing that the expenditure occurred, and a written explanation justifying the expenditure in terms of need or benefit to the Committee.

In August 2013 staff again met with Mr. Manthey to explain the documentation that would be needed to support reimbursements made so long after he had appeared on the ballot and to justify amendments to previously filed Committee reports. A schedule for supplying the receipts and amended reports was established. However, throughout this investigation deadlines for providing documentation and amended reports were routinely extended to accommodate Mr. Manthey's work schedule, and because of his delays in collecting records.

On September 16, 2013, Mr. Manthey provided amended reports for the years 2001 through 2011 along with a cover letter explaining some of his actions. No receipts or invoices were filed

with the amendments. In total the amended reports disclosed $15,789.62 of previously undisclosed campaign expenditures and noncampaign disbursements.

In his letter Mr. Manthey explained that he did not use the Committee's funds to pay for expenditures after 2000 because

> After my unsuccessful bid for the Senate in 2000 our campaign had come across a Manthey for Senate campaign check of dubious origination alerted to me from my local long term bank...The problem of misused campaign checks was quickly solved by freezing the account and destroying all physical check books so no more checks could be written.
>
> From that point on I had paid for the remaining expenses of the 2000 campaign as well as the 2006, 2010 and 2012 campaigns from my personal accounts and cash. Another part of my reasoning at the time to use personal funds from that point forward, the year 2001, was that I have always planned on running for the Senate again. It was comfortable knowing I had a campaign war chest…of $6107.27 that would launch the next campaign. The money remained in the account the entire time.

In his letter Mr. Manthey also pointed out that staff had acknowledged both in meetings and in correspondence that committee funds may be used to pay for late filing fees and civil penalties accrued from the late filing of reports; or used to reimburse the candidate if the candidate paid for the late fees and civil penalties with personal funds. Staff's statements to Mr. Manthey on the use of committee funds to pay for late fees and civil penalties were based on Minnesota Rules 4503.0900, which specifies in part that the payment of fines assessed by the Board is a noncampaign disbursement if paid for with committee funds.

The payment of late filing fees and civil penalties was a significant issue for the Committee. Three Reports of Receipts and Expenditures were filed late and accrued a total of $2,426.47 in late filing fees and civil penalties. As referenced earlier a payment of $1,146.60 made from the Committee's account was received in 2007.

The remaining $1,279.87 was referred to the Department of Revenue for collection on the Board's behalf. The Department of Revenue collected $1,534.66 ($992.48 on August 19, 2011, and $542.18 on June 26, 2012) from Mr. Manthey's personal funds. The $254.79 collected by the Department of Revenue over the $1,279.87 referred by the Board was for interest accrued on the Committee's debt and associated collection fees.

After reviewing the additional $15,789.62 in campaign expenditures and noncampaign disbursements claimed by Mr. Manthey staff developed a detailed list of the documentation and explanations that would be needed to justify a reimbursement with the Committee's funds. Only reimbursements of money collected from Mr. Manthey's personal funds by the Department of Revenue were accepted without further documentation. Mr. Manthey was provided the list of additional information required by letter dated October 1, 2013.

Mr. Manthey did not provide receipts for 2001 until April 10, 2014. Receipts for 2002 through 2011 were not provided until August 14, 2014. A final inquiry to clarify the purpose related to certain receipts was sent to Mr. Manthey by letter dated September 16, 2014. No response was received.

Mr. Manthey appeared at the October 7, 2014, Board meeting in executive session to make a statement and answer questions.

Board Analysis and Conclusions

This investigation is the first by the Board using the authority in Minnesota Statutes section 211B.12 to determine if money raised for political purposes was used for appropriate purposes. When using this authority the Board will give appropriate deference to the uses of the money approved by the treasurer, or in this case, the candidate of the committee. That deference is given because individuals who contribute to a committee expect that the committee will make the best use of that money to further a particular political view point. If a contributor did not believe that the contribution would in some way support and affect elections in Minnesota there would be presumably no reason to make the contribution. Contributors to a committee do not expect, or undoubtedly want, the Board to be involved in determining how to best spend committee funds.

Therefore, the Board interest in evaluating the purpose of committee expenditures is not to determine if the funds were spent wisely; but rather to ensure that the money entrusted to a political committee was not diverted or used for the personal benefit of any individual. The Board will also determine if expenditures were properly disclosed to ensure that the public may evaluate whether the committee is making good use of private contributions and public funds.

The standard of documentation and explanation that Mr. Manthey was required to provide to justify expenditures was high because he was in effect asking the Board to retroactively accept reimbursements to him personally that were not timely reported when the expenditures occurred, and which in most cases were made years after his name was last on the ballot. The Board evaluated the expenditures listed in the amendments against the requirements of Minnesota Statutes section 10A.025. This amounted to a two-part test:

1. Could Mr. Manthey provide the documentation required to prove that expenditures occurred; namely vouchers, canceled checks, bills, invoices, and receipts.

2. Could Mr. Manthey provide in sufficient detail the necessary information to verify, explain, and clarify the purpose of the expenditure; how the expenditure was used to benefit the committee; and how the expenditure complied with the requirements of chapters 10A and 211B.

This second requirement is critical because many goods and services that could be used to benefit a political committee can also be diverted to an inappropriate personal use.

The Board's concern that items purchased with political committee funds may be diverted to personal use increases the longer a political committee is inactive. This concern is further heightened when expenditures are not reported to the Board in the year in which they occurred, but instead are first reported in amendments years later, and after the candidate repeatedly certified that there were no outstanding committee obligations.

Evaluating the records and statements provided for this investigation shows there are few reimbursements claimed by Mr. Manthey that met both tests required to justify a personal reimbursement with Committee funds.

The expenditures for which Mr. Manthey seeks reimbursement were for the most part documented with copies of receipts, invoices, or cashed checks. However, these records only

proved that expenditures occurred; they did not explain how the expenditures were used to benefit the Committee. Despite repeated requests, Mr. Manthey did not provide the detailed explanations requested, and instead relied on the description of the expenditure provided in the amended reports. In most cases these descriptions were vague, and even when combined with the details provided on the receipts did not support a claim that the purchase of the goods or services benefited the Committee.

In fact some receipts were sufficient by themselves to determine that Committee funds could not be be used to pay for the expenditure. For example, the documentation for expenditures on the 2009 amendment included a $93.76 invoice for repair of a toilet in Mr. Manthey's personal residence. The Board cannot imagine an explanation that would justify the use of Committee funds for this expenditure. The same conclusion was reached for multiple receipts for dry cleaning, flowers, and meals.

Some receipts initially appeared to document an expenditure that may have benefited the Committee, but on closer examination raised significant questions. For example, the 2008 amendment contains a $640.33 expenditure for a "computer for campaign data list." The Board has long recognized that the purchase of a computer for use by a registered committee is a permitted expenditure as long as the computer is only used for purposes related to the committee.[2] Indeed, in 2000, the Committee reported a reimbursement to Mr. Manthey in the amount of $1,450 for a computer. The Board did not challenge the expenditure in 2000 and typically does not challenge the purchase of a computer by an active committee. However the receipt for the computer purchased in 2009 showed that the acquisition was made in the name of a company affiliated with Mr. Manthey, not in the name of the Committee. Mr. Manthey was asked to justify the purchase of another computer eight years after his name was last on the ballot, and to explain how the use of the computer was limited to benefit the Committee. Mr. Manthey did not provide any further explanation.

Similar reviews of the documentation provided, and the purpose for the expenditures stated in the 2002 through 2011 amendments, lead the Board to conclude that Mr. Manthey failed to show the Committee's need for or use of the goods and services purchased, or to provide assurances that a given purchase benefited only the Committee. Therefore, the Board does not accept any claimed reimbursement for expenditures that occurred after 2001, other than for late fees and civil penalties collected by the Department of Revenue.

The 2001 amendment lists an additional $1,876.79 in campaign expenditures ($642.71 of which are non-itemized) and $607.90 in noncampaign disbursements. Of the itemized expenditures in 2001 the Board accepts as documented and for campaign-related purposes the cost of attending a leadership conference conducted by the candidate's party ($149), and an unpaid bill for printing that occurred in 2000 ($444.56).

The 2001 amendment also lists a payment of $844.08 for "office supplies", and $163.34 for postage. In reviewing the specific receipts for office supplies the Board found no justification to use the Committee's funds for office furniture when the Committee did not have an office outside of Mr. Manthey's residence.

However, some of the receipts for office supplies were for more general items such as envelopes, paper, and toner cartridges. There are legitimate campaign related purposes for general office supplies, even during a non-election year. Rather that attempting to determine the use of each ream of paper or box of envelopes the Board will accept $631.09 in general

[2] Advisory Opinion 89, (1984).

office supplies bought in 2001 as a reimbursable campaign expenditure. Mr. Manthey was also notified that in order for the Board to accept any other expenditure for general office supplies after 2001 as a valid use of Committee funds he would need to explain the specific activities or events at which the supplies were used. No additional explanation for office supplies claimed after 2001 was received.

The itemized expenditure of $163.64 for postage on the 2001 amendment was documented with receipts that totaled only $97.19. Total documented expenditures accepted for reimbursement on the 2001 amendment for general office supplies and postage therefore came to $728.28.

In summary, of the $6,107.27 in Committee funds claimed by Mr. Manthey for reimbursement the Board recognizes $1,534.66 for funds collected from Mr. Manthey by the Department of Revenue, $728.28 for office supplies and postage bought in 2001, $149 for a political party leadership conference held in 2001, $444.56 for payment of an unpaid printing bill in 2001. The remaining $3,250.77 in Committee funds cannot be claimed for reimbursement and must be returned by Mr. Manthey.

The Board considered whether Mr. Manthey violated Minnesota Statutes section 10A.025, subdivision 2, by knowingly filing false reports with the Board. The reports originally filed by Mr. Manthey for 2001 through 2011 did not contain the $15,789.62 in campaign expenditures and noncampaign disbursements contained in the amendments. If these omissions were deliberate and with knowledge that the reports were therefore incomplete Mr. Manthey would be in violation of this statute.

The Board declines to find a violation of this statute because of Mr. Manthey's stated belief that he could save the funds in the Committee account for use in some future election if he personally paid for ongoing Committee expenditures. The statutory requirement that all expenditures to benefit the Committee must go through and be reported by the Committee was apparently not considered by Mr. Manthey, and he seemed to believe that an accurate report of the money in the Committee account was sufficient.

In addition to returning $3,250.77 Mr. Manthey must file a final set of amended reports that show the reimbursements accepted in these findings, and which exclude all other expenditures. Upon completion of the actions ordered in these findings the Committee will be terminated.

Based on the above analysis and the relevant statutes, the Board makes the following:

Findings of Fact

1. The money in the Timothy Manthey for Senate Committee account was raised for political purposes.

2. On December 30, 2011, the account for the Timothy Manthey for Senate Committee contained $6,107.27.

3. In 2012 the $6,107.27 was transferred to Timothy Manthey's personal account.

4. Documentation and explanation sufficient to justify $2,856.50 in reimbursements to Mr. Manthey from the Committee's funds were obtained by the Board.

5. The remaining $3,250.77 in committee funds were used for purposes not permitted under Chapter 10A, or Minnesota Statutes section 211B.12.

6. The Reports of Receipts and Expenditures filed on behalf of the Timothy Manthey for Senate Committee in 2001 through 2011 did not contain all expenditures incurred by the Committee and were therefore incomplete and inaccurate.

7. The amended Reports of Receipts and Expenditures filed for the years 2001 through 2011 disclose expenditures that may not be made with Committee funds, and are therefore inaccurate.

8. The Timothy Manthey for Senate Committee has been inactive for more than six years.

9. Mr. Manthey did not knowingly certify and file false Reports of Receipts and Expenditures with the Board when he filed reports that showed accurate cash balances for the Committee, but no unpaid reimbursements.

Conclusions of Law

1. Timothy Manthey violated Minnesota Statutes section 211B.12 by using $3,250.77 collected for political purposes for expenditures not reasonably related to the conduct of an election campaign or qualifying as noncampaign disbursements.

2. Minnesota Statutes section 10A.02, subdivision 11, requires Mr. Manthey to pay $3,250.77 to the State of Minnesota for deposit in the general account of the state elections campaign fund.

3. Minnesota Statutes section 10A.025, subdivision 4, requires Mr. Manthey to file amended reports that accurately reflect the activities of the Timothy Manthey for Senate Committee for the years 2001 through 2011.

4. After Mr. Manthey has paid $3,250.77 to the State of Minnesota and filed the required amendments, the Committee is hereby administratively terminated under Minnesota Statutes section 10A.245, subdivision 2.

5. The inaccuracies in the Committee reports were not knowingly made within the meaning of Minnesota Statutes section 10A.025, subdivision 2, and therefore no violation of that statute occurred.

Based on the above Findings of Fact and Conclusions of Law, the Board issues the following:

ORDER

1. Mr. Manthey is directed to forward to the Board payment of $3,250.77 by check or money order payable to the State of Minnesota within thirty days of the date of this order.

2. Mr. Manthey is directed to file amended Reports of Receipts and Expenditures for the years 2001 through 2011 that accurately disclose unpaid reimbursements and the disbursal of Committee funds within thirty days of the date of this order.

3. After Mr. Manthey pays the $3,250.77 and files the amended reports the Committee is administratively terminated without further Board action.

4. The executive director is directed to send Mr. Manthey notice of this order by certified and first class mail and to notify Mr. Manthey that if he does not comply with paragraph 2 of this order , a civil penalty of $3,000 is by the terms of this order imposed against him personally.

5. If Mr. Manthey does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statutes.

6. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11.

Dated: October 7, 2014

/s/ Deanna Wiener

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board