

Clearinghouse Rule 17-035

SS# 103-16, Wisconsin Administrative Register No. 731A1, 11/7/2016

WISCONSIN ETHICS COMMISSION Proposed Rule Making Order

INTRODUCTORY CLAUSE

The Wisconsin Ethics Commission proposes an order to create ETH 26, related to settlement of campaign finance, lobbying, and ethics violations.

RULE SUMMARY

A. **Statutes interpreted:** s. 19.49(2)(b)10., Stats.

B. **Statutory authority:** The Wisconsin Ethics Commission is specifically directed to promulgate this rule pursuant to s. 19.49(2)(b)10., Stats.

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

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

s. 11.1304(17), Stats.:

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

s. 19.48(1), Stats.:

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

s. 227.11(2)(a), Stats.:

227.11 Extent to which chapter confers rule-making authority.

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

- C. **Explanation of agency authority:** The Ethics Commission is required to prescribe, by rule, categories of civil offenses which the Commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The Commission may only settle alleged offenses, which in the opinion of the Commission, constitute a minor violation, a violation caused by excusable neglect, or which for other good cause shown is not in the public interest to prosecute.
- D. **Related statute(s) or rule(s):** ss. 11.1400, 13.69, and 19.579, Stats.
- E. **Plain language analysis:** The rule sets forth categories of civil offenses and specifies the amounts for which the Commission will agree to settle various violations of Chapter 11, subchapter III of Chapter 13, and subchapter III of Chapter 19.
- F. **Summary of, and comparison with, existing or proposed federal regulations:** There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.
- G. **Comparison with similar rules in adjacent states:**

Illinois: Permits settlement of similar campaign finance violations subject to approval by the state board of elections. The board of elections publishes the factors they will consider in offering a settlement. State law prescribes standard late fees for various reports and administrative code further details the penalties to be assessed for late reports based on the total amount of receipts, expenditures, and the committee's balance at the end of the report. ILL. ADMIN. CODE tit. 26 § 125.425. These civil penalties range from the lowest category of \$25 per business day for the first violation, \$50 per business day for the second violation, and \$75 per business day for the third and each subsequent violation; to the highest category of \$50 per business day for the first violation, \$100 per business day for the second violation, and \$200 per business day for the third and each subsequent violation. *Id.*

Iowa: Permits settlement of similar violations subject to approval by the Ethics and Campaign Finance Disclosure Board, but does not publish a schedule of potential settlement terms for violations. The Board is authorized to administratively resolve late reports by assessment of automatic civil penalties as established by the Board. IOWA ADMIN. CODE r. 351—9.4(5).

Michigan: Permits settlement of similar violations subject to approval by the Secretary of State. The Secretary of State publishes information related to good cause waivers of late filing fees, but does not have a full settlement schedule for all violations. State law provides a standard \$10 per business day late fee for campaign registration statements. MICH. COMP. LAWS § 169.224. State law also provides an escalating penalty for late campaign finance reports of \$25 for each business day the report remains unfiled, an additional \$25 for each business day after the first three business days the report remains unfiled, and an additional \$50 for each business day after the first ten business days the report remains unfiled. MICH. COMP. LAWS § 169.232.

Minnesota: Permits settlement of similar campaign finance, lobbying, and ethics violations with the approval of the Campaign Finance and Public Disclosure Board. The manuals published by this Board state various amounts as late fees for different reports. Additionally, the Office of Administrative Hearings uses a penalty matrix designed by the Secretary of State's office to provide guidance for most campaign finance violations.

H. **Summary of factual data and analytical methodologies:** N/A

I. **Analysis and supporting documentation used to determine effect on small businesses:**
N/A

J. **Effect on small business:** N/A

K. **Agency contact person:**

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L. **Place where comments are to be submitted and deadline for submission:**

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 6, 2017. Written comments should be addressed by mail to: David Buerger, P.O. Box 7984, Madison, WI 53707-7984; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

TEXT OF RULE

SECTION 1. Chapter ETH 26 is created to read:

CHAPTER ETH 26 SETTLEMENT OFFER SCHEDULE

ETH 26.01 Definitions. In this chapter:

- (1) “15 day report” means the report referred to in s. 13.67, Stats.
- (2) “Commission” means the Wisconsin Ethics Commission.
- (3) “Continuing report” includes the campaign finance reports due in January and July referred to in ss. 11.0204 (2) (c), (3) (b), (4) (c) and (d), (5) (b) and (c), and (6) (a) and (b); 11.0304 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c); 11.0404 (2) (c) and (d), and (3) (b) and (c); 11.0504 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c); 11.0604 (2) (c), (3) (b), (4) (c) and (d); and (5) (b) and (c); 11.0704 (2), (3) (a), (4) (a) and (b), and (5) (a) and (b); 11.0804 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c); and 11.0904 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c), Stats.
- (4) “Contribution” has the meaning given in s. 11.0101 (8), Stats.

- (5) “Contributor” means a person or committee who makes a contribution as defined under s. 11.0101 (8), Stats.
- (6) “Contributor information” includes the information required by ss. 11.0204 (1) (a) 1. and 3.; 11.0304 (1) (a) 1. and 3.; 11.0404 (1) (a) 1.and 3.; 11.0504 (1) (a) 1. and 3.; 11.0604 (1) (a) 1. and 3.; 11.0704 (1) (b) 1. and 2.; 11.0804 (1) (a) 1.and 2.; and 11.0904 (1) (a) 1. and 3., Stats.
- (7) “Disbursement” has the meaning given in s.11.0101 (10), Stats.
- (8) “Disbursement information” includes the information required by ss. 11.0204 (1) (a) 8., 11.0304 (1) (a) 8., 11.0404 (1) (a) 8., 11.0504 (1) (a) 8., 11.0604 (1) (a) 8., 11.0804 (1) (a) 8., and 11.0904 (1) (a) 8., Stats., regarding disbursements greater than \$20.
- (9) “Excess contribution” means a contribution that exceeds any of the limits set in ss. 11.1101, 11.1104, 11.1107, and 11.1108, Stats.
- (10) “Filing fee” means the fee required by s. 11.0102 (2), Stats.
- (11) “Late contribution” means a contribution or contributions of \$1,000 or more cumulatively from a single contributor made later than 15 days prior to a primary or election as described in ss. 11.0204 (7), 11.0304 (7), and 11.0404 (4), Stats.
- (12) “Late contribution report” includes the campaign finance reports referred to in ss. 11.0204 (7), 11.0304 (7), and 11.0404 (4), Stats., that are due no later than 72 hours after receiving a late contribution if the late contribution was not previously included in the registrant’s preprimary or preelection report.
- (13) “Lobbyist” has the meaning given in s. 13.62 (11), Stats.
- (14) “Post-election campaign finance report” includes the campaign finance reports referred to in ss. 11.0204 (3) (c) and (5) (d); 11.0304 (3) (c) and (5) (d); 11.0404 (3) (d); 11.0504 (3) (c) and (5) (d); 11.0604 (3) (c) and (5) (d); and 11.0704 (3) (b) and (5) (c), Stats., that are due no earlier than 23 days and no later than 45 days after a special election.
- (15) “Preelection campaign finance report” includes the campaign finance reports referred to in ss. 11.0204 (2) (b), (3) (a), (4) (b), and (5) (a); 11.0304 (2) (b), (3) (a), (4) (b), and (5) (a); 11.0404 (2) (b) and (3) (a); 11.0504 (2) (b), (3) (a), (4) (b), and (5) (a); 11.0604 (2) (b), (3) (a), (4) (b), and (5) (a); 11.0804 (2) (b), (3) (a), (4) (b), and (5) (a); and 11.0904 (2) (b), (3) (a), (4) (b), and (5) (a), Stats., that are due no earlier than 14 days and no later than eight days before an election.
- (16) “Preprimary campaign finance report” includes the campaign finance reports referred to in ss. 11.0204 (2) (a) and (4) (a); 11.0304 (2) (a) and (4) (a); 11.0404 (2) (a); 11.0504 (2) (a) and (4) (a); 11.0604 (2) (a) and (4) (a); 11.0804 (2) (a) and (4) (a); and 11.0904 (2) (a)

and (4) (a), Stats., that are due no earlier than 14 days and no later than eight days before a primary.

- (17) “Principal” has the meaning given in s. 13.62 (12), Stats.
- (18) “Prior offense” means a previous violation of the same provision within the past three years.
- (19) “Registrant” means an individual or organization registered with the ethics commission.
- (20) “September report” includes the campaign finance reports due in September referred to in ss. 11.0204 (4) (d), (5) (c), and (6) (b); 11.0304 (4) (d) and (5) (c); 11.0404 (2) (d) and (3) (c); 11.0504 (4) (d) and (5) (c); 11.0604 (4) (d) and (5) (c); 11.0704 (4) (b) and (5) (b); 11.0804 (4) (d) and (5) (c), and 11.0904 (4) (d) and (5) (c).
- (21) “Specific express advocacy report” includes the campaign finance reports referred to in ss. 11.0505, 11.0605, and 11.1001, Stats., that are due no later 72 hours after making a disbursement on express advocacy during the period beginning on the day that is 60 days prior to the day of the primary or election and ending on the day of the primary or election.
- (22) “Statement of economic interests” means a statement of economic interests that an individual is required to file under s. 19.43, Stats.
- (23) “Statement of lobbying activity and expenditures” means the statement referred to in s. 13.68, Stats.

ETH 26.02 Settlement of campaign finance violations.

(1) FAILURE TO TIMELY FILE A CONTINUING REPORT OR SEPTEMBER REPORT.

- (a) If the commission receives a continuing or September report within 30 days after the due date for that report, the commission may issue a written warning to the registrant.
- (b) If the commission receives a continuing or September report within 31 to 60 days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:
 - 1. If the registrant has committed no prior offenses, a settlement offer of \$100 may be extended.
 - 2. If the registrant has committed one or more prior offenses, a settlement offer of \$200 may be extended.

- (c) If a continuing or September report is received within 61 to 90 days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:
 - 1. If no prior offenses have been committed by the registrant, a settlement offer of \$200 may be extended.
 - 2. If a prior offense has been committed by the registrant, a settlement offer of \$300 may be extended.
- (d) If a continuing or September report is received within 91 to 120 days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:
 - 1. If no prior offenses have been committed by the registrant, a settlement offer of \$300 may be extended.
 - 2. If a prior offense has been committed by the registrant, a settlement offer of \$400 may be extended.
- (e) If a continuing or September report is received more than 120 days after the due date for that report, the commission may extend a settlement offer of \$500.

(2) FAILURE TO TIMELY FILE A PREPRIMARY, PREELECTION, OR POST-ELECTION REPORT.

- (a) If a preprimary, preelection, or post-election report is received one day after the due date for that report, the commission may extend a settlement offer of \$100.
- (b) If a preprimary, preelection, or post-election report is received two days after the due date for that report, the commission may extend a settlement offer of \$150.
- (c) If a preprimary, preelection, or post-election report is received three days after the due date for that report, the commission may extend a settlement offer of \$200.
- (d) If a preprimary, preelection, or post-election report is received four days after the due date for that report, the commission may extend a settlement offer of \$250.
- (e) If a preprimary, preelection, or post-election report is received five days after the due date for that report, the commission may extend a settlement offer of \$300.
- (f) If a preprimary, preelection, or post-election report is received six days after the due date for that report, the commission may extend a settlement offer of \$350.
- (g) If a preprimary, preelection, or post-election report is received seven days after the due date for that report, the commission may extend a settlement offer of \$400.

- (h) If a preprimary, preelection, or post-election report is received eight days after the due date for that report, the commission may extend a settlement offer of \$450.
- (i) If a preprimary, preelection, or post-election report is received nine or more days after the due date for that report, the commission may extend a settlement offer of \$500.

(3) FAILURE TO TIMELY PAY A FILING FEE.

- (a) If a filing fee is received within one to 15 days after the due date, the commission may issue a written warning to the registrant.
- (b) If a filing fee is received within 16 to 45 days after the due date, the commission may extend a settlement offer of \$300.
- (c) If a filing fee is received within 46 to 90 days after the due date, the commission may extend a settlement offer of \$500.
- (d) If a filing fee is received more than 90 days after the due date, the commission may extend a settlement offer of \$800.

(4) FAILURE TO TIMELY FILE A LATE CONTRIBUTION REPORT. If a registrant fails to timely file a late contribution report, the commission may extend a settlement offer of five percent of the total amount of the late contribution.

(5) FAILURE TO TIMELY FILE A SPECIFIC EXPRESS ADVOCACY REPORT. If a registrant fails to timely file a specific express advocacy report, the commission may extend a settlement offer of five percent of the disbursement.

(6) FAILURE TO PROVIDE CONTRIBUTOR INFORMATION.

- (a) If contributor information is not included on a campaign finance report, but is received within 30 days after notification from the commission, the commission may issue a written warning to the registrant.
- (b) If contributor information is not included on a campaign finance report, but is received more than 30 days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the contributions with incomplete information.

(7) FAILURE TO PROVIDE DISBURSEMENT INFORMATION.

- (a) If disbursement information is not included on a campaign finance report, but is received within 30 days after notification from the commission, the commission may issue a written warning to the registrant.

- (b) If disbursement information is not included on a campaign finance report, but is received more than 30 days after notification from the commission, the commission may issue a settlement offer of \$100 plus 10 percent of the contributions with incomplete information.

(8) CASH BALANCE DISCREPANCIES. If a registrant's cash balance at the beginning of a reporting period does not match the registrant's cash balance reported at the end of the prior reporting period; or the reported beginning balance of a report, plus all receipts, minus all expenditures, does not equal the reported ending balance of that report; and the cash balance is corrected:

- (a) Within 30 days after notification from the commission, the commission may issue a written warning to the registrant.
- (b) More than 30 days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the cash balance discrepancy.

(9) EXCEEDING CONTRIBUTION LIMITS. Any registrant that receives an excess contribution may be extended a settlement offer in the amount by which the contribution exceeded the applicable limit.

(10) PROHIBITED CORPORATE, UNION, ASSOCIATION, OR TRIBAL CONTRIBUTIONS.

- (a) Any registrant that receives a contribution contrary to s. 11.1112, Stats., may be extended a settlement offer in the amount of 1.5 times the amount of the contribution, up to a maximum of \$500 plus surrendering the amount of the unlawful contribution.
- (b) Any person that makes a contribution contrary to s. 11.1112, Stats., may be extended a settlement offer in the amount of 1.5 times the amount of the contribution.

(11) PROHIBITED LOBBYIST CONTRIBUTIONS.

- (a) Any candidate committee that receives a contribution in violation of s. 13.625, Stats., may be extended a settlement offer requiring the return of the contribution to the lobbyist.
- (b) Any lobbyist that makes a contribution in violation of s. 13.625, Stats., may be extended a settlement offer in the amount of 1.5 times the amount of the contribution, up to a maximum of \$1,000.

(12) AGGRAVATING OR MITIGATING CIRCUMSTANCES. Notwithstanding the settlement offer amounts specified in this chapter, the commission may consider aggravating or mitigating circumstances in determining the terms of any settlement offer that may be extended.

ETH 26.03 Settlement of lobbying violations.

(1) FAILURE TO TIMELY FILE A STATEMENT OF LOBBYING ACTIVITY AND EXPENDITURES.

- (a) If the statement of lobbying activity and expenditures is received within two business days after the due date for that report:
 - 1. If no prior offenses have been committed by the principal, no penalty may be imposed.
 - 2. If a prior offense has been committed by the principal, the commission may issue a written warning to the principal.
- (b) If the statement of lobbying activity and expenditures is received within three to five days after the due date for that report:
 - 1. If no prior offenses have been committed by the principal, the commission may issue a written warning to the principal.
 - 2. If a prior offense has been committed by the principal, the commission may extend a settlement offer of \$50.
- (c) If the statement of lobbying activity and expenditures is received within six to 15 days after the due date for that report:
 - 1. If no prior offenses have been committed by the principal, the commission may issue a written warning to the principal.
 - 2. If a prior offense has been committed by the principal, the commission may extend a settlement offer of \$100.
- (d) If the statement of lobbying activity and expenditures is received within 16 to 29 days after the due date for that report:
 - 1. If no prior offenses have been committed by the principal, the commission may extend a settlement offer of \$50.
 - 2. If a prior offense has been committed by the principal, the commission may extend a settlement offer of \$250.
- (e) If the statement of lobbying activity and expenditures is received 30 days or more after the due date for that report:
 - 1. If no prior offenses have been committed by the principal, the commission may extend a settlement offer of \$100.
 - 2. If a prior offense has been committed by the principal, the commission may extend a settlement offer of \$500.

(2) FAILURE TO TIMELY FILE A 15 DAY REPORT.

- (a) If a 15 day report is not timely received and the principal has no prior offenses:
 - 1. If the unreported interest is less than 10 percent of the principal's total effort, the commission may issue a written warning to the principal.
 - 2. If the unreported interest is 10 percent or more of the principal's total effort, the commission may extend a settlement offer of \$25 per late reported interest.
- (b) If a 15 day report is not timely received and the principal has one prior offense:
 - 1. If the unreported interest is less than 10 percent of the principal's total effort, the commission may extend a settlement offer of \$50 per late reported interest.
 - 2. If the unreported interest is 10 percent or more of the principal's total effort, the commission may extend a settlement offer of \$100 per late reported interest.
- (c) If a 15 day report is not timely received and the principal has two or more prior offenses, the commission may extend a settlement offer of \$100 per late reported interest.

(3) AGGRAVATING OR MITIGATING CIRCUMSTANCES. Notwithstanding the settlement terms provided in this chapter, the commission may consider aggravating or mitigating circumstances in determining the terms of any settlement offer that may be extended.

ETH 26.04 Settlement of ethics violations.

(1) FAILURE TO TIMELY FILE A STATEMENT OF ECONOMIC INTERESTS.

- (a) If the statement of economic interests is received within 15 days after the due date for the statement of economic interests, the commission may issue a written warning to the individual.
- (b) If the statement of economic interests is received 16 or more days after the due date for the statement of economic interests, the commission may extend a settlement offer of \$100 plus \$100 for every additional 15 days.

(2) AGGRAVATING OR MITIGATING CIRCUMSTANCES. Notwithstanding the settlement terms provided in this chapter, the commission may consider aggravating or mitigating circumstances in determining the terms of any settlement offer that may be extended.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.