

STATE OF MINNESOTA
COUNTY OF RAMSEY

ETHICAL PRACTICES BOARD

In the matter of Proposed Rules governing
Campaign Financing (9MCARS§1.0001-1.0043);
Economic Interest Disclosure (9MCARS§1.0100-
1.0111); Lobbyists (9MCARS§1.0200-1.0209);
Conflict of Interest (EC300-307);
Representation Disclosure (EC500-507);
and Hearings (EC601-623)

STATEMENT OF NEED
AND REASONABLENESS

The Ethics in Government Act, Minn. Stat. ch. 10A, enacted in 1974, authorized the Ethical Practices Board to promulgate rules to carry out the purposes of the Act. Rules have been adopted governing Campaign Financing (9MCARS§1.0001-1.0043 - adopted 1974; amended 1976, 1978, 1979); Economic Interest Disclosure (9MCARS§1.0100-1.0111 - adopted 1974; amended 1976, 1978, 1979); Lobbyists (9MCARS§1.0200-1.0209 - adopted 1974; amended 1979); Conflict of Interest (EC300-307 - adopted (1975); Representation Disclosure (EC500-507 - adopted 1975); and Hearings (EC601-623 - adopted 1975; amended 1977).

The need to amend these rules arises in order to implement registration and reporting requirements of Minn. Stat. ch. 10A enacted in Laws of 1975 Chapter 271, Laws of 1978 Chapter 463, Laws of 1979 Chapter 59, and Laws of 1980 Chapter 607; nomenclature changes in Minn. Stat. ch. 15 enacted in Laws of 1975 Chapter 271; and the application of Minn. Stat. ch. 645 to agency rules enacted in Laws of 1981 Chapter 117; to enable the Board to provide direction for the 1982 elections to individuals and associations required to register and file statements and reports with the Board; to guide the Board in providing forms and monitoring compliance; to provide the public with information regarding the data collected by Minn. Stat. §§10A.01-10A.34; to remove obsolete provisions and language from existing rules; and to incorporate applicable advisory opinions which lapse on the day of adjournment of the regular session of the Legislature in the second year following the date of the opinion.

The following material describes the need for and reasonableness of each rule proposed; texts of advisory opinions and findings cited are attached and are hereby incorporated in this statement. To assist members of the public who are not trained in the law or in political activities and who are involved in endeavors regulated and administered by Minn. Stat. ch. 10A, rules which paraphrase statutory language are crucial to the understanding of the rules.

CHAPTER ONE: CAMPAIGN FINANCING RULES

9MCARS1.0002 Definitions. Reference to the Act is removed as unnecessary to the understanding of the rules. Reference to time and date of filing is clarified to conform with existing rule 9MCARS1.0111, and the method of computing time in Minn. Stat. ch. 645; repetition of statutory language in Minn. Stat. § 10A.20 is removed.

9MCARS1.0010 Campaign literature. Clause B of this rule clarifies that since literature distributed by a candidate's committee is presumed to be for the purpose of influencing the nomination or election of the candidate, the cost of the literature must be reported by the candidate's committee

whether or not the literature is also an in-kind donation from the group which prepared the literature. This rule provides a fair way for candidates and their campaign committees to disclose to the public the actual costs of materials distributed during a campaign; ensures disclosure of contributions and expenditures which must be applied toward the applicable limits imposed by Minn. Stat. §§10A.25 and 10A.27; incorporates the substance of Advisory Opinion #71 to give guidance to principal campaign committees.

9MCARS1.0012 Change of office sought by candidate. This rule establishes administrative procedures to ensure timely disclosure to the public about the activities of principal campaign committees established to influence the nomination or election of the same individual to different offices. Language added to Clause A. 1. clarifies that the provisions of the existing rule apply only when change in office sought occurs in the same year in which there is an election for both of the offices. In subsequent election years, contribution and expenditure limits applicable to the particular office sought must be applied jointly to all of that candidate's principal campaign committees in order to ensure that contributions received by that candidate and expenditures made by that candidate during an election year are in compliance with limits applicable to the single office sought in a specific election. At present, a candidate with more than one active committee may receive total contributions and make total expenditures through all the committees which are in excess of the applicable limits imposed by Minn. Stat. §§10A.25 and 10A.27. In order to provide timely disclosure and ensure that the applicable spending limits are not exceeded, the rule requires all principal campaign committees established by the same candidate to report before the primary election and before the general election, whether or not there is an election in that year for one or more of the offices to which that candidate sought nomination or election.

9MCARS1.0015 Judicial candidate. This rule is needed to implement the provisions of Laws of 1979, Chapter 59 Sections 2 and 7 which extended the campaign finance disclosure provisions of Minn. Stat. ch. 10A to candidates for county court, probate court, and county municipal court; to clarify the application of Minn. Stat. §10A.20, subds. 3(b) and 5 to candidates for elective judicial office; and to give guidance to principal campaign committees established by these candidates. Contribution disclosure requirements in Minn. Stat. §10A.20, subds. 3(b) and 5, for statewide candidates are applied to candidates for the supreme court since candidates are elected from the entire state. Contribution disclosure requirements in Minn. Stat. §10A.20, subds. 3(b) and 5, for legislative candidates are applied to candidates for the district, county, and probate courts since candidates are elected from geographic areas more related in size to legislative districts than to the entire state. This rule incorporates provisions of the current rule, 9MCARS1.0015 Contribution disclosure judgeship.

9MCARS1.0026 Late filing fees. Provisions of the present rule regarding computation of late filing fees by business days conflict with computation of time in Minn. Stat. ch. 645, which applies to rules under Laws of 1981, Chapter 117, Section 2. The proposed amendments provide uniform references to the administration of late filing fees which are consistent with late filing fee provisions in other chapters of these rules; remove reference to "business days"; incorporate language consistent with existing

9MCARS1.0105 which establishes the date when the late filing fee commences after an undelivered certified notice is forwarded by first class mail; deletes language in the present rule which conflicts with existing 9MCARS1.0105.

9MCARS1.0029 Noncampaign disbursements; constituent services. This rule incorporates the substance of Advisory Opinion #68 to give guidance to principal campaign committees. The opinion and the rule are based on Minn. Stat. §10A.01, subd. 10c(f) which specifies that constituent services performed from the beginning of the term to 60 days after adjournment sine die of the legislature in the election year for the office held are deemed to be noncampaign disbursements. Additionally, the opinion and the rule are based on Minn. Stat. §10A.01, subd. 10c (g) which authorizes the Board to determine whether an activity involves a noncampaign disbursement.

9MCARS1.0038 Sample ballot prepared by a candidate. This rule incorporates the substance of Advisory Opinion #63 to give guidance to associations and principal campaign committees. The rule guides associations which may screen candidates for endorsement with the intention of preparing sample ballots advocating the election of certain candidates by specifying when such ballot preparation will be authorized or independent expenditures.

9MCARS1.0042 Special elections. This rule clarifies the provisions of Minn. Stat. §§ 10A.32, subd. 3b and 10A.33. Additionally the rule clarifies that Minn. Stat. § 10A.01, subd. 9, defines elections to include special elections, however, Minn. Stat. § 10A.33 provides that the tax credit agreement and public financing provisions of Minn. Stat. §§ 10A.30-10A.32 do not apply to special elections. This rule clarifies that the campaign contribution limits of Minn. Stat. § 10A.27 apply to special elections. Language provides uniform reference to tax credit agreement; substance of the existing rule is unchanged and appears in Clause C.

9MCARS1.0043 Termination of registration. Clauses B and C establish administrative procedures which may be applied to allow inactive committees with unpaid bills subject to statutes of limitation to terminate under Minn. Stat. § 10A.24. Inactive committees with unpaid bills now must continue to report; however, their unpaid bills may have been written off by creditors as bad debts. In addition, Minn. Stat. § 541.05 creates a six year limitation on contract actions. The cost of requiring public disclosure exceeds the public good. Clause B is based upon the fact that all money received by the Board under Minn. Stat. ch. 10A is deposited in the general fund of the state. Clauses A and D incorporate, unchanged, the substance of the current rule.

9MCARS1.0044 Return of public financing. This rule establishes administrative procedures to clarify the circumstances which require the return of public financing received from the state elections campaign fund; to provide for enforcement of the timely return of public financing, where required; to guide candidates and their principal campaign committees in compliance with Minnesota's public financing law. Paraphrase of statutory language in this rule is crucial to the understanding of the rule by candidates and campaign committee treasurers who are affected by the limitations upon the state election campaign fund imposed by Minn. Stat. § 10A.32. Clause B. informs the public of the steps the Board will take to enforce the provisions of Minn. Stat. § 10A.32. In addition to the Board's authority for promulgating rules, need for this rule is supported by Minn. Stat. § 10A.02, subds. 8(c) and 9.

9MCARS1.0045 Multi-candidate support by state political parties. This rule clarifies the application of Minn. Stat. § 10A.275 to disclosure of the source of contributions which are expended to pay costs of official party sample ballots and phone banks relevant to candidates defined in Minn. Stat. § 10A.01, subd. 5; guides state political parties in preparation of reports required by Minn. Stat. § 10A.20. The rule clarifies that all funds used by political parties to make expenditures for candidates defined in Minn. Stat. ch. 10A must be reported in accordance with the applicable law, including contributions from sources not registered with and reporting to the Board.

9MCARS1.0046 Ballot questions. This rule is needed in order to clarify the registration and reporting requirements for individuals, associations, principal campaign committees, political committees, and political funds required by Laws of 1980, Chapter 607 to file statements and reports about contributions and expenditures to promote or defeat a ballot question. This rule incorporates the substance of Advisory Opinions #65, #67, #70, and #73 issued in 1980 which will lapse before the 1982 general election.

A. This clause incorporates the substance of Advisory Opinions #65, Questions 9 and 10; #67; and #73 and clarifies the circumstances under which associations are required to register and report contributions to promote or defeat a ballot question under Minn. Stat. §§ 10A.01, subds. 7, 10a, 10b, 16; 10A.12, subds. 1, 5; 10A.13; 10A.14; 10A.19, subd. 4; and 10A.20, subd. 3(g).

B. Clauses B1 and B2 incorporate the substance of Advisory Opinion #65, Questions 7 and 8 and clarify that contributions to a candidate from an association's political committee or political fund and the same association's ballot question committee or fund shall be aggregated and shall not exceed the contribution limits imposed by Minn. Stat. § 10A.17. Clause B3 incorporates the Board's policy that an association makes expenditures for postage, envelopes, and labor regardless of whether or not ballot question literature is mailed with other communications from the association, such as statements or bills; provides guidance to associations which are required to register and report contributions and expenditures to promote or defeat a ballot question under Minn. Stat. ch. 10A.

C. This clause incorporates the substance of Advisory Opinions #65, Questions 3, 5, and 13; and #70 and clarifies the application of Minn. Stat. §§ 10A.01, subds. 10, 10a, 10b; 10A.17; 10A.25; 10A.32, subds. 1, 2, to the allocation of expenditures to promote or defeat a ballot question by principal campaign committees, political committees, and political funds.

CHAPTER TWO: ECONOMIC INTEREST DISCLOSURE RULES

9MCARS1.0105 Late filing fees. Changes the computation of late filing fees. Provisions of the present rule regarding computation of late filing fees by business days conflict with computation of time in Minn. Stat. ch. 645, which applies to rules under Laws of 1981, Chapter 117, Section 2. The proposed amendments provide uniform references to the administration of late filing fees which are consistent with the late filing fee provisions in other chapters of these rules.

9MCARS1.0111 Time for filing. Reference to time and date of filing is clarified to conform with provisions of other Board rules and with the method of computing time in Minn. Stat. ch. 645.

CHAPTER THREE: LOBBYIST REGISTRATION AND REPORTING RULES

9MCARS1.0201 Definitions. Except for reference to the time and date of filing to conform with existing rule 9MCARS1.0111 and the method of computing time in Minn. Stat. ch. 645, the substance of this rule is unchanged.

9MCARS1.0209 Late filing fees. Provisions of the present rule regarding computation of late filing fees by business days conflict with the computation of time in Minn. Stat. ch. 645, which applies to rules under Laws of 1981, Chapter 117, Section 2 and with Minn. Stat. §§ 10A.03, subd. 3 and 10A.04, subd. 5. The latter conflict adversely affects attempts to secure both a delinquent registration or report and payment of a late filing fee in the same legal action. The rule incorporates language consistent with existing 9MCARS1.0105 and provides uniform reference to the administration of late filing fees.

CHAPTER FOUR: CONFLICTS OF INTEREST RULES

9MCARS1.0301 Definitions. This rule removes language which is obsolete and which repeats Minn. Stat. §§ 10A.01, subd. 4; and 10A.01, subd. 18, presently in effect as EC301(c) and (f); provides reference to state agencies under Laws of 1975, Chapter 271. Reference to time and date of filing is clarified to conform with other Board rules and the method of computing time in Minn. Stat. ch. 645. The rule is currently in effect as rule EC301.

CHAPTER FIVE: REPRESENTATION DISCLOSURE RULES

9MCARS1.0501 Definitions. This rule removes obsolete language and language which repeats Minn. Stat. §§ 10A.01, subd. 4, and 10A.01, subd. 18 under EC501 (c) and (g); clarifies time and date of filing to conform to provisions of other Board rules and the method of computing time in Minn. Stat. ch. 645. The rule is currently in effect as rule EC501.

9MCARS1.0508 Late filing fees. Laws of 1978, Chapter 463, Section 34 authorized the Board to levy late filing fees for failure to file timely Representation Disclosure Statements. In order to clarify the provision for the public officials potentially liable for late filing fees, this rule establishes procedures to impose late filing fees. The proposed rule provides uniform references to the administration of late filing fees which are consistent with late filing fee provisions in other chapters of these rules, including 9MCARS1.0105 which establishes the date when the late filing fee commences after an undelivered certified notice is forwarded by first class mail. (see 9MCARS1.0026, 1.0105, and 1.0209)

CHAPTER SIX: HEARINGS RULES

9MCARS1.0601 Definitions. This rule removes obsolete language; adds reference to time and date of filing to conform with rule 9MCARS1.0111; substance of present rule is unaltered. The rule is currently in effect as rule EC601.

9MCARS1.0602 Complaints of violations. Clauses A, B, C, and E are presently in effect as 9MCARS1.0013.

D. Since Minn. Stat. § 10A.11 instructs the Board to report its findings in matters of probable cause to the appropriate law enforcement authorities, this rule is proposed to clarify that individuals who appear before the Board regarding an investigation of a complaint must be truthful in their responses to Board questions and must submit truthful statements.

E. The substance of this clause is presently in effect as 9MCARS1.0013 D.

F. Presently in effect as rule EC603 (b) (4), this clause has been added to clarify the application of Minn. Stat. § 10A.13 and Minn. Stat. ch. 15 to the investigation of complaints.

G. and H. Incorporating the Board's public findings in a complaint, August 24, 1981, these clauses apply the confidentiality provisions of present rule 9MCARS1.0013 to the case of an individual publicly complaining about an alleged violation of Minn. Stat. ch. 10A and then subsequently filing a complaint with the Board, thereby causing the confidentiality provisions of Minn. Stat. § 10A.02, subd. 11 to prevent the individual or association complained against from responding publicly.

9MCARS1.0603 Investigations and audit. The substance of existing rule EC603 (b) is incorporated in this rule; obsolete language, including reference to "Ethics Commission" which was changed to Ethical Practices Board by Laws of 1975, Chapter 271, Section 6, is removed. Although the rule is presented as "all new material", Clauses A, B, C, and D contain the substance of existing EC603 (b), unchanged. Clause E incorporates by reference the procedures proposed in 9MCARS1.0602 D. and E. regarding meetings of the Board during investigation or audit.

REPEALER

9MCARS1.0013 Complaints of violations. This rule is repealed in Chapter One, Campaign Financing Rules, and is proposed with amendments as 9MCARS1.0602 in Chapter Six, Hearing Rules in order to clarify its application to potential violations of Minn. Stat. §§ 10A.01-10A.34.

EC603 Complaints, investigations and audits. This rule is repealed because it is superseded by proposed 9MCARS1.0602 Complaints of violations and 1.0603 Investigations and audits because the latter rule incorporates the substance of existing rule EC603.