

CHAPTER 4525
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
HEARINGS, AUDITS, AND INVESTIGATIONS

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4525.0010 SCOPE.

This chapter applies to the conduct of hearings, audits, and investigations by the board.

Statutory Authority: *MS s 10A.02*

History: *20 SR 2504*

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4525.0100 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to this chapter and Minnesota Statutes, chapter 10A. The definitions in chapter 4501 and in Minnesota Statutes, chapter 10A, apply to this chapter.

Subp. 1a. [Repealed, 20 SR 2504]

Subp. 2. [Repealed, 20 SR 2504]

Subp. 2a. **Complaint.** "Complaint" means a written statement, including any attachments, that:

A. alleges that the subject named in the complaint has violated Minnesota Statutes, 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.022, subdivisions 1 and 2.

Subp. 4. [Repealed, 20 SR 2504]

Subp. 5. [Repealed, 39 SR 757]

Subp. 6. [Repealed, 39 SR 757]

Subp. 6a. **Preponderance of the evidence.** "Preponderance of the evidence" means, in light of the evidence obtained by or known to the board, the evidence leads the board to believe that a fact is more likely to be true than not true.

Subp. 7. [Repealed, 20 SR 2504]

Subp. 8. **Respondent.** "Respondent" means the subject of a complaint, an investigation, or an audit.

Statutory Authority: *MS s 10A.01; 10A.02; 10A.022; 10A.025*

History: *11 SR 1611; 20 SR 2504; 39 SR 757; L 2015 c 73 s 26; 49 SR 979*

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4525.0150 GENERAL PROVISIONS.

Subpart 1. **Scope.** This part applies to all complaints, investigations, and audits 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 must be sent by electronic and United States mail to the most recent addresses 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 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.022, subdivision 2, to order an investigation or audit in any matter.

Statutory Authority: *MS s 10A.02*

History: *39 SR 757; L 2015 c 73 s 26*

Published Electronically: *September 1, 2015*

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.022, subdivision 3, 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, or of the individual who has signed the complaint while acting on the complainant's behalf, must be included on the complaint. The complaint must be signed by the complainant or an individual authorized to act on behalf of the complainant. A complainant must 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 complaint is dismissed or withdrawn or the board makes a finding.

Subp. 3. [Repealed, 30 SR 903]

Subp. 3a. **Withdrawal.** Prior to a prima facie determination being made, a complaint may be withdrawn upon the written request of the person making the complaint or any individual authorized to act on that person's behalf. After a prima facie determination is made, a complaint may not be withdrawn.

Subp. 4. **Oath.** 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.

Subp. 5. **Confidentiality.** Any portion of a meeting during which the board is hearing testimony or taking action concerning any complaint, investigation, preparation of a conciliation agreement, or a conciliation meeting must be closed to the public. The minutes and tape recordings of a meeting closed to the public must be kept confidential.

Subp. 6. **Hearings.** At any time during an investigation of a complaint, the board may hold a contested case hearing before making a finding on the complaint.

Statutory Authority: *MS s 10A.01; 10A.02; 10A.022; 10A.025*

History: *11 SR 1611; 12 SR 1809; 20 SR 2504; 26 SR 1363; 30 SR 903; 39 SR 757; L 2015 c 73 s 26; 49 SR 979*

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4525.0210 DETERMINATIONS PRIOR TO AND DURING FORMAL INVESTIGATION.

Subpart 1. [Repealed, L 2017 1Sp4 art 3 s 18]

Subp. 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 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. 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 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. 3a. **Making the probable cause determination.** In determining whether there is probable cause to believe a violation occurred, any evidence obtained by or known to the board may be considered. Arguments of the respondent and complainant must be considered. Probable cause exists if there are sufficient facts and reasonable inferences to be drawn therefrom to believe that a violation of law has occurred.

Subp. 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. 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 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.

At the conclusion of the investigation, the board must determine whether a violation occurred. The board's determination of any disputed facts must be based upon a preponderance of the evidence.

Subp. 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 5, the board must either dismiss the matter without prejudice or order a staff review under part 4525.0320.

In making the determination of whether to dismiss the complaint or 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.

Statutory Authority: *MS s 10A.01; 10A.02; 10A.022; 10A.025*

History: *39 SR 757; L 2015 c 73 s 26; L 2017 1Sp4 art 3 s 18; 49 SR 979*

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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. If the matter was initiated by a complaint, the complaint has not been dismissed, and a probable cause determination has not been made, the executive director must send a copy of the request to the complainant no later than the time that the request is submitted to the board. Under any other circumstances a complainant must not be notified or provided a copy of the request. The request must be considered by the board at its next meeting that occurs at least ten days after the request was received. If the executive director sends a copy of the request to the complainant pursuant to this subpart, the complainant must be given an opportunity to be heard by the board.

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.

Statutory Authority: *MS s 10A.01; 10A.02; 10A.022; 10A.025*

History: *39 SR 757; 49 SR 979*

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4525.0300 [Repealed, 11 SR 1611]

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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.022, subdivision 3.

Subp. 3. **Resolution of matter under staff review by conciliation agreement.** Subject to board approval under Minnesota Statutes, section 10A.022, subdivision 3a, 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.

Statutory Authority: *MS s 10A.02*

History: *39 SR 757; L 2015 c 73 s 26*

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4525.0330 [Repealed, L 2018 c 119 s 34]

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4525.0340 SUBMISSION TO BOARD; BOARD-INITIATED INVESTIGATIONS AND MATTERS NOT RESOLVED BY CONCILIATION AGREEMENT.

Subpart 1. [Repealed, L 2018 c 119 s 34]

Subp. 2. **Board action on submission.** When it receives a submission under Minnesota Statutes, section 10A.022, subdivision 3d, the board must take one of the following actions:

- A. provide guidance and direct the executive director to begin or to continue 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 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 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. 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.

Statutory Authority: *MS s 10A.02*

History: *39 SR 757; L 2018 c 119 s 34*

Published Electronically: *October 2, 2018*

4525.0400 [Repealed, 11 SR 1611]

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4525.0500 INVESTIGATIONS AND AUDITS; GENERAL PROVISIONS.

Subpart 1. **No complaint.** The board may undertake investigations or audits with respect to statements and reports which are filed or should have been filed under Minnesota Statutes, chapter 10A, although no complaint has been filed. Any decision as to whether an investigation should be undertaken must be made at a closed meeting of the board.

Subp. 2. [Repealed, 39 SR 757]

Subp. 2a. **Penalties.** In exercising discretion as to the imposition of a civil penalty for violation of a statute within the board's jurisdiction, the board must consider the factors identified in Minnesota Statutes, section 14.045. The board also may consider additional factors such as whether a violator created and complied with appropriate internal controls or policies before the violation occurred, whether the violator could have avoided the violation, whether the violator voluntarily reported or corrected any violation, and whether the violator took measures to remedy or mitigate any violation or avoid future violations.

Subp. 3. **Contested case hearing.** At any time during an investigation or audit, the board may hold a contested case hearing before making a finding on any investigation or audit.

Subp. 4. [Repealed, 20 SR 2504]

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 investigation and 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.

Statutory Authority: *MS s 10A.01; 10A.02; 10A.022; 10A.025*

History: *11 SR 1611; 12 SR 1809; 20 SR 2504; 30 SR 903; 39 SR 757; 49 SR 979*

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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. When conducting an audit, the board may require testimony under oath, permit written statements to be given under oath, and issue subpoenas and cause them to be served. When conducting an audit the

board may require the production of any records required to be retained under Minnesota Statutes, section 10A.025.

Subp. 2. **Respondent's rights.** The executive director must send to each respondent a draft 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. 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.

Subp. 4. **Audits of affidavits of contributions.** The board may audit the affidavit of contributions filed by a candidate or the candidate's treasurer to determine whether the candidate is eligible to receive a public subsidy payment. The executive director must contact the principal campaign committee of a candidate and request the information necessary to audit any affidavit of contributions that was not filed by electronic filing system, if the committee has accepted contributions from individuals totaling less than twice the amount required to qualify for a public subsidy payment.

Subp. 5. **Audits of other campaign finance filings.** The board may audit any campaign finance report or statement that is filed or required to be filed with the board under Minnesota Statutes, chapter 10A or 211B. The board may conduct a partial audit, including auditing a campaign finance report to determine whether a beginning or ending balance reconciles with the filer's financial records. In determining whether to undertake an audit, the board must consider the availability of board resources, the possible benefit to the public, and the magnitude of any reporting failures or violations that may be discovered as a result of the audit. The board may conduct audits in which respondents are selected on a randomized basis designed to capture a sample of respondents that meet certain criteria. The board may conduct audits in which all respondents meet certain criteria. When undertaking an audit with respondents selected on a randomized basis, the board must, to the extent possible, seek to prevent selecting respondents based on their political party affiliation, or if the respondents are candidates, based on their incumbency status.

Statutory Authority: *MS s 10A.01; 10A.02; 10A.022; 10A.025*

History: 39 SR 757; 49 SR 979

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4525.0600 [Repealed, 11 SR 1611]

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4525.0700 [Repealed, 11 SR 1611]

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4525.0800 [Repealed, 11 SR 1611]

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4525.0900 INITIATING A CONTESTED CASE.

Subpart 1. **Initiation by application.** Any person requesting an exemption under Minnesota Statutes, section 10A.20, subdivisions 8 and 10, or any other person whose rights, privileges, and duties the board is authorized by law to determine after a hearing, may initiate a contested case by making application. Except in anonymous proceedings, an application shall contain: the name and address of the applicant; a statement of the nature of the determination requested including the statutory sections on which the applicant wishes a determination made and the reasons for the request; the names and addresses of all persons known to the applicant who will be directly affected by such determination; and the signature of the applicant.

Subp. 2. **Initiation by board order.** Where authorized by law, the board may order a contested case commenced to determine the rights, duties, and privileges of specific parties.

Statutory Authority: *MS s 10A.02*

Published Electronically: September 30, 2013

4525.1000 INITIATING ANONYMOUS PROCEEDINGS.

Subpart 1. **Authority.** Any person making application for an exemption from campaign reporting requirements under Minnesota Statutes, section 10A.20, subdivisions 8 and 10, may proceed anonymously if the board determines that identification of the person for the purpose of the hearing would result in exposure to economic reprisals, loss of employment, or threat of physical coercion.

Subp. 2. **Application.** Any person wishing to proceed anonymously under this part shall make an application under part 4525.0900, subpart 1, which shall contain:

- A. a name by which the person wishes to be known for the purposes of the proceeding;
- B. the name and address of a person who is authorized to receive official notices or correspondence from the board or upon whom service of legal process may be made;
- C. a statement of the facts which lead the applicant to believe that identification of the applicant for purposes of the hearing would result in exposure to economic reprisals, loss of employment, or threat of physical coercion;

D. the name and address of a person who will appear for the applicant during the proceedings if the applicant wishes to remain anonymous;

E. a statement of the facts which lead the applicant to believe that exposure to economic reprisal, loss of employment, or threat of physical coercion would result from the applicant's compliance with the reporting and disclosure requirements of Minnesota Statutes, section 10A.20; and

F. the signature of the applicant in the name by which the person wishes to be known during the proceedings or the signature of the person designated to appear for the applicant.

Subp. 3. **Determination.** Upon receipt of an application for initiation of anonymous proceedings, the board may require the applicant or the person designated to appear for the applicant to appear before a closed meeting of the board with appropriate precautions taken to preserve the anonymity of the applicant from persons other than the board and its employees. The purpose of the appearance is to enable the board to decide whether an anonymous proceeding is required.

Statutory Authority: *MS s 10A.02*

History: *20 SR 2504*

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