

Campaign Finance and Public Disclosure Board

Proposed 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 ~~before the board~~ 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 proceeding to suspend a public official without pay for failure to file a statement of economic interest under Minnesota Statutes, section 10A.09, subdivision 8;~~ 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 [Repealed, 20 SR 2504]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 [Repealed, 20 SR 2504]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 investigation, a formal audit, or a staff review or another form of summary proceeding.

4525.0150 GENERAL PROVISIONS.

Subpart 1. **Scope.** This part applies to all formal investigations, formal 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 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 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 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 complaint may be submitted on a form provided by the board, or may be typed or handwritten.~~ The name and address of the person making the complaint must be ~~typewritten or hand-printed~~ 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. ~~No investigations are required if a complaint is frivolous on its face, illegible, too indefinite, does not identify the violator, or is unsigned by the complainant.~~

Subp. 3. [Repealed, 30 SR 903]

Subp. 4. **Oath.** ~~Testimony~~ Evidence 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.

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. **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 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. **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. **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. **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; 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 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.

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. **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, the board must either dismiss the matter without prejudice or offer the respondent the option of resolving the matter through 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 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, 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. 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 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 agreement.** Subject to board approval under part 4525.0330, a respondent may agree to resolve a matter under staff review by 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 AGREEMENT.

Every matter under staff review that is resolved by agreement under part 4525.0320 must be presented to the board 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.

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 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 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 NOT RESOLVED BY AGREEMENT.

Subpart 1. **Submission to board.** If a matter under staff review is not resolved by agreement under parts 4525.0320 and 4525.0330, the executive director must submit the matter to the board under this part.

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.

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 continue the staff review;

B. dismiss the matter without prejudice;

C. order a formal investigation of the matter; or

D. order the respondent to take the actions required to remedy the subject violation and impose a civil penalty if provided for by statute.

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; 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 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. **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 ~~to 6~~ 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 a draft audit report to the respondent before the board considers adoption of the final audit report. The respondent has the right to respond in writing to the 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.