

Agenda

Item #5



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members
From: Jonathan Wayne, Executive Director
Date: January 15, 2008
Re: Adoption of Proposed Rule Changes

At its meeting on October 30, 2007, the Ethics Commission voted to invite public comment on proposed changes to the Commission Rules drafted by staff. The Commission held a public hearing at the December 7 meeting and interested persons were invited to submit comments through December 17.

The staff recommends that you adopt the proposed rule amendments without further changes. The changes to Chapter 1 would be considered "routine technical," which means that your adoption of them would be final. The changes would become effective upon filing with the Secretary of State after they are reviewed by the Office of the Attorney General for form and legality. The changes to Chapter 3 would be considered "major substantive," which means that your adoption of them would be provisional. The Legislature would have an opportunity to review them before they become effective.

I have attached:

- Comments by Carl Lindeman
- Proposed amendments to Chapter 1 rules and statement of factual and policy basis
- Proposed amendments to Chapter 3 rules and statement of factual and policy basis for amendments

The Commission received comments from only one individual, Carl Lindeman, which are attached. He recommends that the provision regarding complaints outside the Commission's jurisdiction (proposed Chapter 1, Section 4(4)) be amended so that "ANY complaint about a Commissioner or member of the Ethics Commission staff should be automatically referred to an appropriate authority outside of the Commission."

In the view of the staff, *automatic* referral to an outside authority is not necessary. Complaints against Commission members are rare, and can be handled on a case-by-case basis. If members of the Commission believe that a complaint about a member should be referred to an outside authority, they may choose to do so. If a complainant believes that the Commission or an individual member has not responded to a complaint correctly, the complainant may take any action he or she believes is appropriate, including forwarding it to a different office.

Thank you for your consideration of the proposed rule changes.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

TrueDialog.ORG

For a more Authentic Democracy

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P.O. Box 171
Portland, Maine 04112

To: Members of the Ethics Commission
From: Carl Lindemann, TrueDialog.org
Date: December 17, 2007
RE: Proposed Rule Changes

This is to follow-up on my written comments submitted for the October 30th Commission meeting and the brief discussion of these matters at the December 7 session.

Reviewing the comments and concerns from Commission Chair Friedman and Commissioner Marsano, I see that I need to clarify the scope of my concern that I believe can be addressed by appropriate rule-making.

The matter is how to address conflicts of interest that arise requiring Commissioners to leave the Commission. This is different from the parallel issue of associations and affiliations that would require a Commissioner to step away from specific cases. However, it may be that the appropriate rule-making remedy could apply to both.

As we discussed, the specific incident giving rise to this need for rule-making is the conflict of interest former Commission Chair Ginn Marvin had while serving as an officer (the Treasurer) of Maine Heritage Policy Center (MHPC). There is strong evidence to suggest that MHPC is appropriately understood as a "political committee." Maine Ethics Law is explicit that being an officer of a political committee disqualifies service on the Commission, much as holding an elective county, state or federal office does. The question is how to apply and enforce a clear boundary imposed by the legislature about those not qualified to serve on the Commission.

How this conflict is different in kind from those that can be remedied by recusal in individual cases becomes clear in practice. Commission Chair Friedman noted that, to the best of his recollection, his predecessor had recused herself from every case concerning MHPC and had left the room during discussions of these cases. What's different is that Ginn Marvin was not just "associated" with MHPC. As the Treasurer of the organization, she was a party to the complaints brought before the Commission. Ginn Marvin was specifically named in the follow-up complaint heard by the Commission last spring and remained in the room during the case. This odd situation shows the exceptional nature of the conflict – the recused Commissioner should normally leave the room. Here, as a named party in the complaint, the Commissioner should remain. Can the Commission properly investigate and adjudicate complaints about a fellow Commissioner? Perhaps the legislature understood this problematic dynamic and wished to avoid such situations. Here, disqualifying officers of political committees and other regulated entities from service on the Commission achieves that goal.

I should add that both Assistant Attorney General Gardiner and Executive Director Jonathan Wayne initially offered opinions that MHPC was not a political committee. Since, they have received substantial evidence demonstrating that it is. The only response has been Mr. Wayne's call for emergency legislation to change the qualification because, he says, the current definition including the political committee prohibition is too broad. Does that mean that they now agree that Ginn Marvin served as a Commissioner while also serving as the officer of a political committee? If it serves the Commission's interests, you may wish to determine that point-of-fact. If you like, I am happy to provide the documentary evidence provided to the Commission previously demonstrating MHPC's identity as a political committee.

There are other troubling outcomes that are of concern to the Commission that underscore the need for rule-making here. The staff had been alerted to additional problematic dynamics raised by Ginn Marvin's service in November 2006. Executive Director Wayne was asked about cases that might be brought by her organization against other entities as part of its declared strategy to deflect attention. Mr. Wayne failed to respond to this concern. In March, Ginn Marvin chaired a case brought by an MHPC operative. The outcome of that case, suggested by MHPC's attorney who happened to be in attendance, was soon used as a precedent for suspending investigation and adjudication of my follow-up case against MHPC. The end result is that the public continues to be denied any clarity about MHPC's involvement in a key political contest of 2006. That the Commission was improperly constituted helps explain this outcome.

My October 30th comments detail the "It Just Sits There" rule/doctrine that Assistant Attorney General Gardiner invoked in response to allegations about the conduct and qualifications of former Commission Chair Ginn Marvin. Then, the Commission claimed a lack of jurisdiction, and failed to refer the matter elsewhere. What I propose is that ANY complaint about a Commissioner or member of the Ethics Commission staff should be automatically referred to an appropriate authority outside of the Commission.

Commissioner Marsano expressed concern over how the claim of a conflict, used inappropriately to sidestep service, is dereliction of duty. In the same way, claims of a lack of jurisdiction, too, where allegations "just sit there" could be a dereliction of duty. What I suggest is a simple way to ensure that issues concerning Commissioners are dealt with appropriately and expeditiously.

-END-

94-270

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 1. DEFINITIONS

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

1. **Act.** "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.
2. **Association.** "Association" means a group of two or more persons, who are not all members of the same immediate family, acting in concert.
3. **Campaign Deficit.** "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].
4. **Campaign Surplus.** "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].
5. **Candidate.** "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§1(5)], and includes individuals running for office as a write-in candidate.

INFORMATIONAL NOTE: All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election, pursuant to section 4.2.A(5)(e) of this rule. A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21- A, chapter 13, subchapter II [§1013-A].

6. **Certified Candidate.** "Certified candidate" has the same meaning as in the Act [§ 1122(1)].
7. **Commission.** "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, §12004-G, subsection 33, and 1 M.R.S.A. §1001 *et seq.*
8. **Contribution.** "Contribution" has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(2)].

9. **Election.** "Election" means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.
10. **Expenditure.** "Expenditure" has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(3)].
11. **Fund.** "Fund" means the Maine Clean Election Fund established by the Act [§1124].
12. **In-Kind Contribution.** "In-kind contribution" means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.
13. **Member.** A "member" of a membership organization includes all persons who currently satisfy the requirements for membership in the membership organization, have affirmatively accepted the membership organization's invitation to become a member, and either:
 - A. pay membership dues at least annually, of a specific amount predetermined by the membership organization; or
 - B. have some other significant financial attachment to the membership organization, such as significant investment or ownership stake in the organization; or
 - C. have a significant organizational attachment to the membership organization that includes direct participatory rights in the governance of the organization, such as the right to vote on the organization's board, budget, or policies.

Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation with which the local, national, or international union is affiliated, and of any other unions which are members or affiliates of the federation. Other persons who have an enduring financial or organizational attachment to the membership organization are also members, including retired members or persons who pay reduced dues or other fees regularly to the membership organization.
14. **Nonparticipating Candidate.** "Nonparticipating candidate" has the same meaning as in the Act [§1122(5)].
15. **Participating Candidate.** "Participating candidate" has the same meaning as in the Act [§1122(6)].

16. **Qualifying Contribution.** "Qualifying Contribution" has the same meaning as in the Act [§1122(7)].
17. **Qualifying Period.** "Qualifying period" has the same meaning as in the Act, except that for special elections, vacancies, withdrawals, deaths, disqualifications or replacements of candidates, the qualifying period shall be the period designated in section 8 of this chapter [§1122(8)].
18. **Seed Money Contribution.** "Seed money contribution" has the same meaning as in the Act [§1122(9)].
19. **Write-In Candidate.** "Write-in candidate" means a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect the candidate and who has filed a declaration to be a write-in candidate pursuant to 21-A M.R.S.A. § 722-A.

SECTION 2. ORGANIZATION

1. **Commission.** The Commission on Governmental Ethics and Election Practices is an independent agency of the State, consisting of five (5) members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature in accordance with Title 1, §1002, subsection 1. The Commission members will elect one member to serve as Chair. Except for the Chair, the members of the Commission have no individual authority.

2. Office

- A. The Commission employs such staff as may be authorized by the Legislature. A Director supervises the staff and is responsible for all day-to-day operations. In the interim between Commission meetings, the Director reports to the Chair, who acts on behalf of the Commission on certain administrative matters. The Commission's offices are located in the Public Utilities Commission Building at 242 State Street in Augusta, where any filing or written submission may be made between the hours of 8 a.m. and 5 p.m. on any day when state government offices are open, except that filings by facsimile or electronic means, where otherwise permitted by statute or rule, may be transmitted at any time. The office has a mailing address of 135 State House Station, Augusta, Maine 04333.
- B. All records of the Commission are maintained in these offices, where they are available for inspection or copying, except as particular records are made confidential by law. The cost of copying Commission documents is set by the Director of the Commission, subject to reasonable limitations and approval of the Commission.
- C. During any period when the position of Director is vacant, the Chair of the Commission will appoint an acting Director.

SECTION 3. MEETINGS

1. **Regular Meetings.** The Commission shall meet at least once per month in any year in which primary and general elections are held.
2. **Special Meetings.** The Commission may meet at any time at the call of the Secretary of State, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Commission, or a majority of its members. Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting. If written notice is not feasible, telephone notice satisfies the foregoing requirement.
3. **Agenda.** The Director will prepare a written agenda for each meeting of the Commission. The agenda will contain items of business to be considered, staff findings and recommendations, and will include the date, time and location of the meeting. When possible, the agenda will be mailed to each Commission member at least 7 days before the meeting.
4. **Notice.** In addition to the public notice required by the public meetings law, 1 M.R.S.A. §406, notice of Commission meetings ~~will~~ shall be given to those directly involved in a matter or affected by matters pending before the Commission, as follows:
 - A. **Legislative Ethics.** When a properly filed request or referral is made for an advisory opinion on a question of legislative ethics, notice that the matter has been placed on the agenda for a Commission meeting will be given by mail to the Legislator whose circumstances or conduct is at issue, or to the Presiding Officer of either House referring the inquiry. When a complaint alleging a violation of the laws on legislative ethics is filed, the Legislator will be informed promptly of the nature of the allegations and the existence of any investigation by the Commission. Notice that the matter has been placed on the agenda for a Commission hearing will be given by certified mail to both the Legislator and the complainant not less than 10 days before the date set for a hearing.
 - B. **Campaign Reports and Finances Law; Lobbyist Disclosure Law.** Notice of the Commission's consideration of any noncompliance with the requirements of the Campaign Reports and Finances Law, the Maine Clean Election Act, or Lobbyist Disclosure Law will be provided to any person or organization alleged to have committed a violation and to any person who has officially requested a Commission investigation or determination, except that notice of the Commission's consideration of issuing subpoenas to conduct an investigation need not be given.
 - C. **~~Other Matters~~ Contents of Notice**
 - (1) ~~With respect to any other matter presented to the Commission, notice will be given to the person or organization whose conduct is at issue, and to any complainant, except as provided in Section 3, subsection 1, paragraph B of these rules.~~

- (2) The notice will include the date, time, and location of the Commission meeting. If mail notice of a meeting is not feasible, the staff will make best efforts to give oral notice to Commission members or to those entitled to notice under this provision.
5. **Public Meetings.** All meetings, hearings or sessions of the Commission will be open to the general public unless, by an affirmative vote of at least 3 members, the Commission requires the exclusion of the public, pursuant to 1 M.R.S.A. §1005 or 1 M.R.S.A. §1013(3).
6. **Quorum.** Every decision of the Commission must be made at a meeting at which at least 3 members of the Commission are present and voting. When it is impossible or impractical for a member of the Commission to travel to Augusta to attend a meeting in person, the member may participate in the meeting by telephone. That member will be considered present at the meeting and part of the quorum.

At least 2 members must be present in person for the conduct of a meeting or public hearing before the Commission. If fewer than 3 members are present in person for a hearing, however, objections to rulings of the presiding officer concerning the conduct of the hearing must be preserved until a meeting of the Commission at which a quorum is present in person. The presiding officer at a meeting or public hearing must be present in person.

7. **Minutes**

- A. The Director will prepare minutes of each business meeting of the Commission. These minutes will be the official record of Commission meetings, and will accurately record all matters considered.
- B. The minutes will record any executive session of the Commission and its subject matter, but will not report the proceedings of the executive session. Likewise, minutes will not be taken of any public hearing held by the Commission, since hearings are separately recorded.

SECTION 4. INITIATION OF PROCEEDINGS

1. **Legislative Ethics.** The Commission is authorized to investigate and make advisory recommendations to either House of the Maine Legislature concerning legislative conflicts of interest or any breach of the legislative ethics set forth in 1 M.R.S.A. §§ 1001 - 1023. The Commission's opinion may be sought by three methods, or the Commission may act on its own motion.
- A. **Legislator's Own Conduct**
- (1) A Legislator seeking an advisory opinion with respect to his or her own circumstances or conduct should make a written request for an opinion, setting forth the pertinent facts with respect to the legislative matter at issue and the circumstances of the Legislator giving rise to the inquiry.

- (2) The request will be officially filed only when received at the offices of the Commission. The Director will promptly send a copy of the request to the Chair, and the matter will be placed on the agenda for the next Commission meeting, or if necessary, at a special meeting.
- (3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.

B. **Complaints.** Any written complaint will be included in the agenda of the next Commission meeting.

- (1) **Complaint by a Legislator.** Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.

(2) **Other Complaints**

- (a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.
- (b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. §1013(2)(B), and a person registering such a complaint will be so notified, by letter.

C. **Referral by Presiding Officer.** When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the Director will arrange a meeting of the Commission as soon as possible to consider the question.

2. **Election Campaign Reporting and Maine Clean Election Act Violations**

- A. **Report Review.** The Commission staff will review all reports filed pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the reporting requirements set by statute or rule. Notice of any omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. If the filer fails to respond within that time frame, the Commission staff may extend the time period within which the filer must comply or place the matter on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting.
- B. **Late Reports and Registrations.** Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
- (1) Lateness of report or registration,
 - (2) Reason for lateness,
 - (3) Kind of report (more stringent application for pre-election reports),
 - (4) Amount of campaign funds not properly reported,
 - (5) Previous record of the filer,
 - (6) Good faith effort of the filer to remedy the matter; and
 - (7) Whether the late filing had an effect on a certified candidate's eligibility for matching funds.
- C. Reports of noncompliance with the provisions of the campaign registration and reporting laws or the Maine Clean Election Act that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair. Any person (as defined in 21-A M.R.S.A. §1001) may make an official request for a Commission investigation or determination by filing a written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the candidate or organization alleged to have violated the

statutory requirements. An official request will be placed on the agenda of the next Commission meeting.

- D. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified.
- ~~E. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting. [NOTE: MOVED BELOW WITHOUT CHANGE]~~
- ~~F. E.~~ E. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. **Lobbyist Disclosure Procedures**

- A. **Report Review.** The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. §311 *et seq.* for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.
- B. **Late Registrations and Reports.** Notice will be given by mail to any lobbyist whose registration, monthly disclosure report, or annual report is delinquent. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. For purposes of 3 M.R.S.A. §319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. **Suspensions.** The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be

mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.

- D. **Request for Penalty Waiver.** A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.
- E. **Request for Waiver of Nonsession Reporting Requirement.** A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. §317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is resumed during the period for which the waiver was granted, the lobbyist must file a monthly disclosure report for the month or months lobbying was conducted.
- F. **Faxing Duly Executed Lobbyist Registration, Reports.** Any registration or report required by 3 M.R.S.A. ch. 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

4. **Matters Outside the Commission's Jurisdiction.** If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting. [NOTE: *MOVED FROM ABOVE WITHOUT CHANGE*]

SECTION 5. FACT FINDING AND INVESTIGATIONS

1. **Before Commission Meeting.** With respect to any inquiry, ~~report complaint,~~ or request for Commission action properly filed in accordance with the preceding section, or any potential violation that comes to the attention of Commission staff through an audit or review of reports, the Director may conduct such preliminary fact finding as is deemed prudent and desirable. When the Director and Counsel find a basis for a preliminary investigation, they will recommend such steps to the Chair as necessary. ~~Pursuant to reviewing reports or finding of fact, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda.~~ The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is necessary to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right

to an agency subpoena. Consultations between the Commission and its Counsel concerning an investigation (including the issuance of subpoenas) where premature public knowledge of the investigation would place the Commission or another investigatory office at a substantial disadvantage may be held in executive session pursuant to 1 M.R.S.A. §§ 405(6)(E), 1005, and 1013(3). Any oral testimony compelled by a subpoena issued by this provision will be presented to the Commission or its staff. When a matter is ready for presentation to the Commission, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda.

2. **By the Commission.** Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting.

SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign.** Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.
2. **Expenditures by Political Action Committees.** In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.
3. **Timing of Reporting Expenditures**
 - A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.
 - B. Expenditures must be reported at the earliest of the following events:
 - (1) The placement of an order for a good or service;

- (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.
- C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.
4. **Advance Purchases of Goods and Services for the General Election**
- A. Consulting services, or the design, printing or distribution of campaign literature or advertising, including the creation and broadcast of radio and television advertising, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.
 - B. If the Commission receives a complaint stating that a candidate or a committee purchased goods or services before a primary election for use in the general election, the Commission may request that the candidate or committee distinguish which of the goods and services were used in the primary election and which were used in the general election.
5. All campaign-related payments made with the personal funds or credit card of the candidate or an individual authorized by the candidate must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the expenditure, and the purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement. If a Maine Clean Election Act candidate uses his or her personal funds to make an expenditure, the campaign must reimburse the candidate within the same reporting period.
6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.
7. When a political action committee or party committee makes an expenditure for a communication to voters for the purpose of influencing the election of a clearly

identified candidate, the amount spent to influence that candidate's election must be specified on the regularly filed campaign finance report of the committee, regardless whether the communication expressly advocates for the election or defeat of the candidate. If a single expenditure influences the election of more than one candidate, the political action committee or party committee shall itemize the amount spent per candidate.

SECTION 9. ACCELERATED REPORTING SCHEDULE

1. **General.** In addition to other reports required by law, any candidate for Governor, State Senator or State Representative who is not certified as a Maine Clean Election Act candidate under Title 21-A §1121 *et seq.*, and who has a certified candidate as an opponent in an election must comply with the following reporting requirements on forms prescribed, prepared, and provided by the Commission.

INFORMATIONAL NOTE: Title 21-A §1017 prescribes reporting requirements for candidates.

2. **101% Trigger Report.** Any candidate subject to this section, who receives, spends or obligates more than 1% in excess of the primary or general election distribution amounts for a Maine Clean Election Act candidate opponent in the same race, must file with the Commission, within 48 hours of such receipt, expenditure, or obligation, a report detailing the candidate's total campaign contributions, receipts, expenditures and obligations to date. The Commission will notify all candidates who have an opposing certified candidate of the applicable distribution amounts and of the trigger report requirement.
3. ~~Any privately funded candidate with a Maine Clean Election Act opponent shall file A nonparticipating candidate who is required to file a report under subsection 2 shall file no later than 5:00 p.m. the following three reports detailing the candidate's total campaign contributions, obligations and expenditures to date, except that a candidate who has not received, spent, or obligated the amount sufficient to require a report under subsection 2 may file an affidavit, by the date the report is due, attesting that the candidate has not received, spent or obligated that amount:~~
 - A. ~~a report filed not later than 5:00 p.m. on the 42nd day before the date on which an election is held that is complete as of the 44th day before the that date of that election;~~
 - B. ~~for gubernatorial candidates only, a report filed not later than 5:00 p.m. on the 21st 25th day before the date on which an election is held that is complete as of the 23rd 27th day before the that date of that election; and~~
 - C. ~~a report filed not later than 5:00 p.m. on the 12th 18th day before the date on which an election is held that is complete as of the 14th 20th day before the that date of that election; and~~

- D. a report on the 6th day before the date on which an election is held that is complete as of the 8th day before that date.
4. **24-Hour Report.** Any candidate who is required to file a ~~101%~~ trigger report must file an updated report with the Commission reporting single expenditures of \$1,000 or more by candidates for Governor, \$750 by candidates for State Senator, and \$500 by candidates for State Representative made after the 14th day before any election and more than 24 hours before 5:00 11:59 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.
5. **Filing by Facsimile or Electronic Means.** For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
- A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.
- B. "Expressly advocate" means any communication that uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!".
- C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.
3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:

- A. Independent expenditures aggregating in excess of \$100 per candidate per election but not in excess of \$250 made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, except that expenditures made in the last 11 days after the 14th day before an election must be reported within 24 hours of the expenditure.

(1) **Quarterly Reports.** Quarterly reports must be filed by 5:00 p.m. on

- (a) ~~A report must be filed on~~ January 15th and be complete as of January 5th;
- (b) ~~A report must be filed on~~ April 10th and be complete as of March 31st;
- (c) ~~A report must be filed on~~ July 15th and be complete as of July 5th; and
- (d) ~~A report must be filed on~~ October 10th and be complete as of September 30th.

(2) **Pre-Election Report.** A report must be filed by 5:00 p.m. on the 12th 14th day before the election is held and be complete as of that day.

If the total of independent expenditures made to support or oppose a candidate exceed \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure. As long as the total amount spent with respect to the candidate does not exceed \$250, all reports must be filed according to the deadlines in this paragraph. If the total amount spent per candidate exceeds \$250, the reports must be filed in accordance with paragraph B.

[NOTE: FOR EXAMPLE, IF A COMMITTEE MAKES THREE \$80 EXPENDITURES IN SUPPORT OF A CANDIDATE ON SEPTEMBER 20, THE 15TH DAY BEFORE THE ELECTION AND THE 8TH DAY BEFORE THE ELECTION, THOSE THREE EXPENDITURES MUST BE REPORTED ON OCTOBER 10th, AND THE ~~12TH~~ 14TH AND 7TH DAYS BEFORE THE ELECTION, RESPECTIVELY.]

- B. Independent expenditures aggregating in excess of \$250 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission within 24 hours of those expenditures. If any additional expenditures, regardless of amount, increase the total spent per candidate above the threshold of \$250, each additional expenditure must be reported within 24 hours.

[NOTE: FOR EXAMPLE, IF A COMMITTEE HAS REPORTED INDEPENDENT EXPENDITURES TOTALING \$300 IN SUPPORT OF A CANDIDATE, AND THE COMMITTEE MAKES AN ADDITIONAL \$50 INDEPENDENT EXPENDITURE IN SUPPORT OF THE CANDIDATE, THE ADDITIONAL \$50 EXPENDITURE MUST BE REPORTED WITHIN 24 HOURS.]

C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:

1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
4. a statement why the expenditure could not be reported by the eighth day before the election.

D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

4. Multi-Candidate Expenditures. When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS

SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

- C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.
5. **Rebuttable Presumption.** Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before ~~an~~ a primary election and 35 days before a general election will be presumed to be an independent expenditure, unless the person making the expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.
- A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):
- (1) Printed advertisements in newspapers and other media;
 - (2) Television and radio advertisements;
 - (3) Printed literature;
 - (4) Recorded telephone messages;
 - (5) Scripted telephone messages by live callers; and
 - (6) Electronic communications.
- This list is not exhaustive, and other types of communications may be covered by the presumption.
- B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):
- (1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
 - (2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;

- (3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
 - (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
 - (5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.
- C. If an expenditure is covered by the presumption and is greater, in the aggregate, than \$100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating \$100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable 21-day or 35-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.
- G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES

When a person or organization is required under 21-A M.R.S.A. §1056-B to file reports because of contributions or expenditures of more than \$1,500 made in support of or in opposition to a ballot question, the reports must be filed according to the following schedule:

1. **Quarterly Reports.** Reports must be filed by 11:59 p.m. on the following deadlines until the date of the election on which the question is on the ballot:
 - A. A report must be filed on January 15th and be complete as of January 5th;
 - B. A report must be filed on April 10th and be complete as of March 31st;
 - C. A report must be filed on July 15th and be complete as of July 5th; and
 - D. A report must be filed on October 10th and be complete as of September 30th.
2. **Pre- and Post-Election Reports.** The person or organization must also file the following reports by 11:59 p.m. on the following deadlines:
 - A. A report must be filed on the ~~6th~~ 11th day before the election is held and be complete as of the ~~12th~~ 14th day before the election.
 - B. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.
3. **24-Hour Reports.** Any contribution or expenditure in excess of \$500 made after the ~~12th~~ 14th day before the election and more than 24 hours before the election must be reported within 24 hours of that contribution or expenditure or by noon of the first business day after the contribution or expenditure, whichever is later.

PROPOSED AMENDMENT TO THE CAMPAIGN FINANCE REPORTING FORM

The Commission proposes to eliminate Schedule E of the campaign finance reporting form for county and legislative candidates who have financed their campaign through accepting traditional campaign contributions. This form requires candidates to list campaign property or equipment that could be converted to the candidate's personal use after an election (*e.g.*, computers, fax machines, or telephones) and how such property or equipment is disposed of. This schedule would continue to be required for candidates who have purchased such property with Maine Clean Election Act funds, pursuant to 21-A M.R.S.A. §§ 1125(12) and 1126, and Chapter 3, Section 7(2)(C) of the Commission rules.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

DRAFT

To: Administrative Procedure Officer
Office of the Secretary of State of Maine

From: Jonathan Wayne, Executive Director

Date: January 25, 2008

Re: Amendments to Routine Technical Rules in Chapter 1 of the Commission's Rules
(94-270 C.M.R. Chapter 1)

**STATEMENT OF FACTUAL AND POLICY BASIS FOR AMENDMENTS
AND SUMMARY OF AND RESPONSE TO COMMENTS**

Chapter 1, Section 1(19) – Definition of “Write-In Candidate”

Factual and Policy Basis: The proposed amendment to the definition of “write-in candidate” would bring it into conformity with the definition in the Election Law at 21-A M.R.S.A. § 1(51).

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 2(2)(A) – Commission Hours of Operation

Factual and Policy Basis: The proposed insertion clarifies that – when permitted by statute – documents may be filed with the Commission outside of normal business hours electronically or by facsimile. For example, the Election Law permits candidates to file campaign finance reports electronically under 21-A M.R.S.A. § 1017(10) and to file written campaign finance reports by facsimile under 21-A M.R.S.A. § 1020-A(4-A).

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 3(4) – Providing Official Notice of Commission Meetings

Factual and Policy Basis: The Commission's regular practice is to provide notice of upcoming meetings to interested individuals by mailing a copy of the agenda seven days before the meeting. The proposed changes to the Commission's rules are not intended to significantly modify the Commission's current practice, but rather to state more clearly those individuals and groups that must receive the notice.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 4(2)(C) – Handing of Maine Clean Election Act Violations

Factual and Policy Basis: The proposed insertion clarifies that the procedures for handling complaints about campaign finance reporting violations also apply to complaints about violations of the Maine Clean Election Act.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Sections 4(2)(E) and 4(4) – Matters Outside the Commission’s Jurisdiction

Factual and Policy Basis: Current Section 4(2)(E) provides a procedure by which the Commission staff can administratively reject a complaint that is outside the Commission’s jurisdiction, provided that the staff notifies the Commission members of the rejection at their next meeting. The proposed changes move this language to a new subsection 4(4) in order to emphasize that the rejection procedure applies not just to allegations of campaign finance violations, but also to other topics that are outside the Commission’s jurisdiction (e.g., complaints about the content of political speech or misconduct by executive branch officials).

Comments: The Commission received a comment from Carl Lindemann that a complaint about a member of the Commission or staff should automatically be referred to an appropriate authority outside of the Commission.

Response: The Commission has chosen not to adopt the proposed concept in this rulemaking. Complaints against Commission members are rare, and can be handled on a case-by-case basis. If members of the Commission believe that a complaint about a member should be referred to an outside authority, they may choose to do so. If a complainant believes that the Commission or an individual member has not responded to a complaint correctly, the complainant may take any action he or she believes is appropriate, including forwarding it to a different office.

Chapter 1, Section 5(1) – Preliminary Fact-Finding by Commission Staff

Factual and Policy Basis: Under the current rule, the Commission staff is authorized to gather facts preliminarily in order to recommend to the Commission whether there appears to be a violation of law or whether a fuller investigation is necessary. The proposed changes would clarify that the staff can engage in preliminary fact-finding on its own initiative – even if no complaint has been filed with the Commission. Also, consistent with the exception to the Executive Session statute at 1 M.R.S.A. § 405(6)(E) for consultations with counsel, the amendment confirms that the Commission could discuss the issuance of a subpoena with its Counsel in executive session when premature public knowledge of the investigation would place the Commission or another investigatory office at a substantial disadvantage.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 7(5) – Campaign Reimbursements to Maine Clean Election Act Candidates

Factual and Policy Basis: Under the proposed amendment, if a Maine Clean Election Act candidate uses his or her personal funds for a campaign expenditure, the campaign must reimburse the candidate within the time period covered by the campaign finance report.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 7(7) – Non-Express Advocacy Expenditures

Factual and Policy Basis: Political action committees (PACs) are required to file regular campaign finance reports with the Commission. Among the financial activities that must be disclosed, PACs must report expenditures made “on behalf of” candidates as well as general operational expenses:

4. Itemized expenditures. An itemization of each expenditure made on behalf of any candidate, campaign, political committee, political action committee and party committee or to support or oppose a referendum or initiated petition, including the date, payee and purpose of the expenditure; the name of each candidate, campaign, political committee, political action committee or party committee on whose behalf the expenditure was made; and each referendum or initiated petition supported or opposed by the expenditure. (underlining added)

7. Other expenditures. Operational expenses and other expenditures in cash or in kind that are not made on behalf of a candidate, committee or campaign. (21-A M.R.S.A. §§ 1060(4) and (7))

Similar reporting requirements apply to party committees (state, county, and municipal) under 21-A M.R.S.A. § 1017-A(2) and (3).

Some PACs and party committees report the costs of political mailings as operating expenditures on Schedule B-1 of their campaign finance reports. This disclosure does not seem to comply with 21-A M.R.S.A. § 1060(4) because it does not identify the candidate(s) supported. Also, if the expenditure benefits more than one candidate (e.g., a payment to a printer to send mailings into three legislative districts), the reporting of the payment as an operational expenditure does not break down the amount spent per candidate.

The proposed change would clarify that even if a communication does not expressly advocate the election of a candidate, the costs of the communication must be reported on Schedule B of the reporting form and must specify the candidate supported and the amount spent to support that candidate.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 9 – Filing Schedule for Accelerated Reports

Factual and Policy Basis: This rule sets forth the filing schedule for “accelerated reports” which are required for some traditionally financed candidates who have Maine Clean Election Act opponents. The proposed rule amendments modify the filing schedule to be consistent with statutory changes made by Chapter 443 of the Public Laws of 2007.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 10(3)(A) – Filing Schedule for Independent Expenditure Reports

Factual and Policy Basis: As defined by the Election Law (21-A M.R.S.A. § 1019-B), independent expenditures are payments for communications to voters that are made independently of candidates by third-parties such as PACs and party committees. Section 10(3)(A) sets forth the filing schedule for reporting independent expenditures between \$100 and \$250 per candidate. The proposed changes to the rule are in accordance with 2007 changes to the Election Law, under which the pre-election report for PACs and party committees covers through the 14th day before the election.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 10(5)(first paragraph) and (5)(D) – Rebuttable Presumption

Under 21-A M.R.S.A. § 1019-B(2), if a political group distributes a communication to voters in the final weeks before an election that names or depicts a clearly identified candidate, the cost of the communication is presumed to be an independent expenditure and the group must file a report of the expenditure unless the group successfully rebuts the presumption before the Commission. In accordance with 2007 changes to the Election Law, the proposed amendment increases the general election period during which this presumption applies from 21 days before the election to 35 days.

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 10(5)(B)(1) – Exception for News Stories

Factual and Policy Basis: The Election Law contains an exception to the definition of the term “expenditure” for a newspaper or broadcast station’s costs for news stories and editorials relating to an election. The exception was amended by the Legislature in 2007 so that it does not cover a newspaper or broadcast station owned or controlled by the candidate’s immediate family. The proposed change to Section 10(5)(B)(1) reflects that change. As a result, payments for a communication to voters in the last 35 days before a general election made by a news outlet owned or controlled by a member of a candidate’s family may be presumed to be an independent expenditure under 21-A M.R.S.A. § 1019(B)(2).

Comments: The Commission received no comments on the proposed rule.

Chapter 1, Section 11 – Filing Schedule for § 1056-B Reports

Factual and Policy Basis: Section 11 sets forth the filing schedule for organizations that do not qualify as PACs but which spend more than \$1,500 to influence a ballot question. The proposed changes conform the schedule to 2007 statutory amendments to the PAC filing schedule.

Comments: The Commission received no comments on the proposed rule.

PROPOSED AMENDMENT TO CAMPAIGN FINANCE REPORTING FORM

Factual and Policy Basis: The Election Law requires that any changes to the campaign finance reporting form used by candidates must be made through a rulemaking. (21-A M.R.S.A. § 1017(6))

The Commission staff proposes to eliminate Schedule E of the form for candidates who are traditionally financed (*i.e.*, funding their campaigns through accepting traditional campaign contributions). Schedule E requires candidates to list campaign property or equipment that could be converted to the candidate's personal use after an election (*e.g.*, computers, fax machines, or telephones) and to disclose how such property or equipment is disposed of.

The staff proposes eliminating the schedule because the Election Law does not require that this information be reported by privately financed candidates, so the Commission's legal basis for requesting this disclosure is not clear. Schedule E would continue to be required for Maine Clean Election Act candidates who have purchased this equipment with public funds.

Comments: The Commission received no comments on the proposed rule.

94-270

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. **Fund Distribution**

- A. **Establishment of Account.** Upon the certification of a participating candidate, the Commission will establish an account with the Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. **Manner of Distribution of Fund.** The Commission will authorize distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
- (1) checks payable to the certified candidate or the certified candidate's political committee; or
 - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.

2. **Timing of Fund Distributions**

- A. **Distribution of Applicable Amounts.** The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§1125(7)] and this Chapter.
- B. **Matching Fund Allocations.** At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.
- C. **Advances**
- (1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.

- (2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a matching fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.

3. **Matching Fund Provision**

- A. **General.** The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§1125(9)].
- B. **Matching Fund Computation Involving Only Certified Candidates**
 - (1) For each certified candidate, the Commission will:
 - (a) add to the initial distribution amount for that election:
 - (i) the sum of any matching funds previously provided for that election, and
 - (ii) the sum of independent expenditures made in support of each certified candidate; and
 - (b) subtract the sum of independent expenditures made in opposition to each certified candidate.
 - (2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.
 - (3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.
- C. **Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures.** In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:
 - (1) The Commission will first determine the applicable amount for the nonparticipating candidate
 - (a) by adding:
 - (i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or

unspent funds carried forward from a previous election to the current election, whichever is greater, and

- (ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and
- (b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.
- (2) The Commission then will determine the applicable amount for the certified candidate
 - (a) by adding:
 - (i) the amount of the initial distribution for that election;
 - (ii) the sum of independent expenditures made in support of the certified candidate;
 - (iii) the sum of matching fund allocations already provided to the certified candidate; and
 - (iv) the amount of:
 - a) any seed money raised by an enrolled certified candidate in a primary or special election or by a replacement candidate in a general election; or
 - b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or
 - c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and
 - (b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.
- (3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.

D. Matching Fund Computation Not Involving a Nonparticipating Candidate.
In races in which there are two or more certified candidates and at least one nonparticipating candidate,

- (1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and
 - (2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then
 - (3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.
 - E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.
 - F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.
 - G. **Matching Fund Cap.** Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election, except that matching funds paid to candidates for Governor for the general election are limited to an amount equal to the initial distribution amount for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
 - H. **Other.** Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
 - I. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.
 - J. **Disbursements with No Campaign Value.** If a privately financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.
4. **Advance Purchases of Goods and Services for the General Election**
- A. If, prior to the primary election, a candidate purchases or receives in-kind contributions of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, but uses or will use a preponderance of those services exclusively for the general

election, then the portion used or to be used for the general election must be counted as a general election receipt or expenditure in calculating the amount of matching funds for any certified candidate in the same race.

- B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written request for an investigation to the Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.
- C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.

SECTION 7. RECORD KEEPING AND REPORTING

- 1. **Record Keeping by Participating and Certified Candidates.** Participating and certified candidates and their treasurers must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016], and chapter 14 [§1125(12-A)]. Failure to keep or produce the records required under Title 21-A and these rules is a violation of the Act for which the Commission may impose a penalty. The Commission may also require the return of funds for expenditures lacking supporting documentation if a candidate or treasurer is found in violation of the record keeping requirements. The candidate or the treasurer shall have an opportunity to be heard prior to any Commission decision imposing a penalty or requiring the return of funds under this section. In addition to these specific actions, the Commission may also take any other action authorized under Title 21-A.
 - A. **Fiduciary Responsibility for Funds.** All seed money contributions and public campaign funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds, ~~other than unspent seed money~~. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured account and may not be used until the candidate receives authorization to spend those funds.
 - B. **Meal Expenses.** A candidate or treasurer must obtain and keep a record for each meal expenditure of more than \$50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.
 - C. **Vehicle Travel Expenses.** A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement must be based on the standard mileage rate prescribed for employees of the State of Maine for the year

in which the election occurs. For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement. A candidate may be reimbursed for vehicle travel expenses at a rate less than the standard mileage rate. A candidate may also reimburse a volunteer for vehicle travel expenses at a rate less than the standard mileage rate as long as the difference does not exceed \$100 per volunteer per election. The Commission may disallow any vehicle travel reimbursements for which the candidate or the treasurer cannot produce an accurate record.

2. **Reporting by Participating and Certified Candidates**

- A. **General.** Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§1017].
- B. **Return of Matching Fund Advances and Unspent Fund Revenues.** Matching fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
- (1) **Unauthorized Matching Funds.** Candidates must return all matching fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.
 - (2) **Unspent Fund Revenues for Unsuccessful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$2,000 in order to defray expenses associated with an audit by the Commission.
 - (3) **Unspent Fund Revenues for All General and Special Election Candidates.** Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$3,500 in order to defray expenses associated with an audit by the Commission.
- C. **Liquidation of Property and Equipment.** Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.
- (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.

- (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

DRAFT

To: Administrative Procedure Officer
Office of the Secretary of State of Maine

From: Jonathan Wayne, Executive Director

Date: January 25, 2008

Re: Amendments to Routine Technical Rules in Chapter 1 of the Commission's Rules
(94-270 C.M.R. Chapter 3)

**STATEMENT OF FACTUAL AND POLICY BASIS FOR AMENDMENTS
AND SUMMARY OF AND RESPONSE TO COMMENTS**

Chapter 3, Section 5(3)(G) – Maximum Matching Funds (major substantive)

Factual and Policy Basis: To be consistent with 2007 statutory changes, the proposed amendment states that the maximum amount of matching funds paid to a candidate for Governor for a general election is equal to the amount initially paid to that candidate for the election (currently \$600,000).

Comments: The Commission received no comments on the proposed rule.

Chapter 3, Section 7(1)(A) – Separate Bank Account for Seed Money (major substantive)

The proposed amendment clarifies that all campaign funds of a Maine Clean Election Act candidate (including seed money) must be segregated in a separate bank account and not commingled with the candidate's personal funds, as already required by 21-A M.R.S.A. § 1016(1).

Comments: The Commission received no comments on the proposed rule.