

Annual List of Rule-Making Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Commission on Governmental Ethics and Election Practices
Umbrella-Unit: 94-270
Statutory authority: 1 MRS §§ 1003(1), 1016-G(4); 5 MRS §19(5)
Chapter number/title: Ch. 1, Procedures
Filing number: 2019-068
Effective date: 5/7/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Commission wishes to clarify procedures for disclosing debts in campaign finance reports and to require officials to disclose in their annual income statements a category or type for any gift received, such as transportation or conference fees.

Basis statement:

Chapter 1, §7(3) - Reporting Debts and Unpaid Obligations

The Commission on Governmental Ethics and Election Practices receives campaign finance reports from candidates, political action committees (PACs), party committees and others that are spending money to influence candidate and ballot question elections. In 2005, the Commission adopted a rule (Ch. 1, §7(3)) specifying that certain actions not involving a payment of money (*e.g.*, ordering campaign goods or services from a vendor) constitute an expenditure that must be disclosed in a campaign finance report. Under the Commission's longstanding reporting forms and electronic filing website, when candidates and political committees disclose an unpaid debt, it appears on Schedule D which is separate from Schedule B (payments of money).

A July 2018 enforcement matter brought to light some confusing aspects of Ch. 1, §7(3). In December 2018 (following the general election), the Commission invited public comment on some amendments to the rule that were intended to provide greater clarity and avoid duplicative financial reporting.

Under the proposed amendments, candidates and political committees would disclose the following actions as an unpaid debt or obligation in campaign finance reports:

- placing an order for a good or service
- signing a contract for a good or service
- accepting a vendor's delivery of goods or performance of a service
- making a promise or agreement to pay a vendor in exchange for a good or service.

Under the proposed rule, if a candidate or political committee incurs a debt *and* pays off the debt during the same report period, the filer would report only the payment, but not the debt. This is consistent with the Commission staff's longstanding advice that debts should be reported on Schedule D only if they remain unpaid at the end of the report period, and also consistent with the design of the Commission's online e-filing system.

The proposed rule also contained an exception to the requirement for candidates and political committees to file an accelerated campaign finance report within 24 hours of making a large expenditure in the last 13 days before an election. The proposed rule stated that if a candidate or committee reports a debt in the last regularly scheduled pre-election campaign finance report and pays the debt in the last 13 days before the election, the candidate or committee would *not* need to disclose the payment in a 24-Hour Report.

Comments received: In a February 11, 2019 email, Darcy Peyser expressed her general support for more disclosure of campaign expenses, and stated that full disclosure of debts and gifts received by Maine candidates would bring integrity to our state elections. Lobbyist Robert

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Howe attended a public hearing held during the Commission's March 6, 2019 meeting, and commented that he viewed the debt-reporting amendments to be helpful. He said that the changes would reduce burdens on candidates and might avoid some late-filing penalties without decreasing transparency. He clarified that these were his personal observations and they were not authorized by his lobbying clients. Mr. Howe did not submit written comments.

In email comments submitted February 11, 2019, Maimoona Imroz stated that she neither supported nor opposed the changes to the debt reporting rule. With respect to §7(3)(D) (concerning a debt that was both incurred and paid within the same report period), Ms. Imroz commented that she did not see a rationale for reporting only the payment, and not the debt.

Ms. Imroz asked a question concerning a circumstance in which a candidate or committee paid off *only part* of a debt. She asked whether the candidate or committee would be required to continue disclosing the unpaid portion of the debt.

Commission's response to comments: The Commission considered the comments submitted, and determined to adopt the rule amendment as proposed.

If a candidate or committee orders campaign goods or services on one date within a report period and pays for those goods or service some days or weeks later within the same report period, the Commission wishes to continue its current procedure that only the payment is disclosed, not the debt. This procedure is simpler for the candidates and committees that are required to file financial reports. Moreover, if the Commission were to change procedures and require that an order of campaign goods and services be disclosed in the same financial report that includes the payment for those goods or services, the dual entries might confuse the public into thinking that the candidate or committee made two different orders.

Under the design of the Commission's e-filing system, when a candidate or committee enters a debt and subsequently pays off part of that debt, the unpaid portion of the debt continues to be displayed in the candidate's or committee's campaign finance reports until the debt is paid off.

Chapter 1, §12 - Officials' Disclosure of Travel Costs or Other Gifts Received

Constitutional officers, the Governor, Legislators and other state officials file annual statements of the sources of their personal income. In the statements, the officials are required to disclose the sources of any gifts received. (1 MRS §1016-G(1)(F); 5 MRS §19(2)(K))

Gifts are defined as anything of value, with some exceptions such as gifts from relatives or gifts from a single source during a calendar year with a total value of \$300 or less. If the official has received travel expenses (such as accommodations or reimbursement for conference fees) worth more than \$300, the official must disclose those as gifts in the annual statement.

Under the Commission's current disclosure procedures, the annual statement requires only the disclosure of the donor's name, which provides the public with no information concerning the nature of the travel costs or gift received. In order to provide greater information to the public, the Commission adopted a rule amendment that would require officials to specify a category for gifts or travel costs received (e.g., "conference fees" or "accommodations") or to provide a short description of the gift or travel cost.

Comments received: In her February 11, 2019, email, Maimoona Imroz expressed her support for the disclosure of a category or description, stating that the rule would increase transparency and raise accountability of government officials. In her February 11, 2019 email comments, Daicy Peyser commented in favor of broad disclosure of gifts received by officials.

Commission's response to comments: The Commission considered the comments submitted, and determined to adopt the rule amendment as proposed.

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Fiscal impact of rule:

The Commission anticipates that the rule amendments will not have a fiscal impact on the State, the municipalities and counties of Maine, and will not impose an economic burden on small businesses.

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Agency name: Commission on Governmental Ethics and Election Practices
Umbrella-Unit: 94-270
Statutory authority: 1 MRS §1003(1); 21-A MRS §1126
Chapter number/title: Ch. 3, Maine Clean Election Act and Related Provisions
Filing number: 2019-069
Effective date: 6/1/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The Commission wishes to clarify how candidates may finance activities after a primary election that is subject to ranked choice voting and during recounts of elections.

Basis statement:

The Commission undertook a rule-making on an emergency basis to mitigate confusion and uncertainty among candidates in the 2018 elections concerning how they could fund campaign activities and involvement in potential litigation during recounts of the June 12, 2018 primary elections and litigation concerning the results of the primary elections.

Chapter 3, § 9 - Recounts, Vacancies, Write-In Candidates, Special Elections

Under the *Maine Clean Election Act* (MCEA), the Commission typically makes the initial payment to participating candidates for the general election in June, soon after the primary elections are held. The Commission amended Ch. 3 §9(1) of the Commission Rules to clarify that the Commission will make the general election payment no later than three days after the Secretary of State submits the tabulation of primary election results to the Governor. (The existing Ch. 3 §9(1) has addressed whether an MCEA candidate could spend a general election payment if a recount proceeding was pending to determine the result of the candidate's primary election.)

The Commission also amended Ch. 3 §9(1) to incorporate the policies set out in 21-A MRSA §1018-A concerning recounts:

- candidates may not spend MCEA funds to pay for the costs of a recount (*e.g.*, hiring an attorney), but
- candidates may receive donations of goods or services for purposes of a recount, with some limitations.

Comments: The Commission received no comments specifically addressed to this rule, but it did receive an email question from the manager of the Garrett Mason for Governor campaign committee inquiring how the campaign could finance litigation services if it were involved in a post-primary court proceeding relating to the procedures for counting election ballots. (Because Sen. Mason is participating in the MCEA program, he is generally not allowed to accept campaign contributions to promote his election.)

Commission's response to comments: To address this question, the Commission adopted Ch. 3 §9(6), which was not among the amendments proposed on March 28th. This provision states that if the results of an election are challenged in a court proceeding, an MCEA candidate may solicit and accept donations to finance attorneys fees or other litigation costs, with the same limitations and exceptions that the Legislature enacted in 21-A MRS §1018-A applicable to recounts. (The contribution limits would apply to donated cash and services, except no limits would apply to donations from the political parties and caucus PACs, or to attorneys or consultants who are donating their services.)

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