

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

.....
August 13, 2014

Room 225

Minnesota Judicial Center

.....

MINUTES

The meeting was called to order by Chair Wiener.

Members present: Beck, Oliver, Peterson, Rosen, Sande, Wiener

Others present: Goldsmith, Sigurdson, Fisher, Pope, Schons, staff; Eller, counsel

MINUTES (July 8, 2014)

After discussion, the following motion was made:

Member Beck's motion: To approve the July 8, 2014, minutes.

Vote on motion: Unanimously passed (Rosen abstaining).

CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for September 2, 2014.

Introduction of new member

Executive Director Goldsmith introduced the new Board member, Mr. Dan Rosen. Chair Wiener and the other members welcomed Mr. Rosen to the Board.

EXECUTIVE DIRECTOR TOPICS

Status of office operations

Mr. Goldsmith reported that the deadline for filing the pre-primary-election report was July 28, 2014. As of the date of the Board meeting, only one report was outstanding. Mr. Goldsmith also said that staff was in the process of renewing the Board's contracts with the Small Agency Resource Team, which handles human resources and some financial activities for the Board. Mr. Goldsmith stated that in addition to these tasks, staff had been busy with Campaign Finance Reporter training, presentations, and preparing discovery responses in the *Seaton v. Wiener* litigation.

Ratification of Affirmative Action Plan

Mr. Goldsmith stated that the Board is required to annually review and reaffirm its Affirmative Action Plan, which is attached to and made a part of these minutes. Mr. Goldsmith reported that the Board's plan is based on the state template and modified to reflect the Board's practices. Mr. Goldsmith stated that the Plan is signed by the executive director and ratified by the Board.

After discussion, the following motion was made:

Member Peterson's motion: To ratify the Affirmative Action Plan signed by the executive director.

Vote on motion: Unanimously passed.

Reconciliation of board data

Assistant Director Sigurdson presented members with an oral report on this topic. Mr. Sigurdson reminded members that in the past, staff had corrected obvious reporting errors (for example, reporting a contribution to a candidate on the schedule for expenditures) and then had sent a change letter to the treasurer as notification of the change and explanation as to why it was needed.

Mr. Sigurdson stated, with Board approval, staff tried a different approach for the 2013 reconciliation. Staff first sent an educational notice to committees that had reconciliation issues. This notice contained information on how to identify a reporting error and made the committee responsible for correcting the errors. Staff sent a second notice to committees that did not respond to the first notice. The second notice warned the committee that it could be subject to a penalty if it did not promptly find and correct reporting errors.

Mr. Sigurdson reported that the results of the two-letter process were encouraging. After the initial letter was sent, the amount of unreconciled transactions was reduced by 50% from \$400,000 to \$200,000. After the second notice was sent, the amount of unreconciled transactions in 2013 was further reduced to \$9,000.

Website redevelopment

Mr. Goldsmith told members that he had signed a contract with MN.IT Services for the infrastructure and framework for the Board's new website. MN.IT also was reviewing the other components of the website redesign to determine if it would be able to complete any of those tasks. Mr. Goldsmith said that MN.IT probably would not be able to undertake the development of the entire website and that staff would begin work on a request for proposals for any components that MN.IT could not develop. Mr. Goldsmith reported that staff had finished the request for proposals to resolve the remaining issues with the recent upgrade of the Board's hardware and software systems.

Mr. Goldsmith stated that staff was exploring options for the new website, including the ability to let users generate passwords and customize homepages. Mr. Goldsmith said that staff would look at metrics showing which aspects of the current webpage were used most often and would develop a survey to find out what users want in the new system. Mr. Goldsmith told members that his review of other agencies' website projects showed that it was very important for the request for proposals to specify exactly what the agency wanted in its website. Projects that lacked this specificity had run into delays and additional costs. Mr. Goldsmith was unable to predict exactly when the new website would be finished but was hopeful that a demonstration site would be available by the end of the year. Members emphasized the importance of keeping the legislature informed of the progress of the website redesign. Mr. Goldsmith indicated that he would work on a legislative update that the Chair could send to legislators.

ENFORCEMENT REPORT

Discussion items

A. Request for Reconsideration of \$100 Late Filing Fee Waiver for 6/16/2014 2nd Report - 1st Judicial Republican Committee.

Mr. Fisher told members that the treasurer for the 1st Judicial Republican Committee, Mr. Dale Nathan, maintained that he had received no notice that a report was due on June 16, 2014. Mr. Nathan also maintained that staff had informed him that the Board had no record of sending notice of the required report, or copies of the disclosure calendar, to him or any other treasurer. Mr. Fisher stated that staff's recollection of the conversation was quite different, as Board records indicated that both the bulletin packet for the 1st quarter report, which contained a disclosure calendar insert, and the notice for the 2nd report due June 16, 2014, had been mailed to the treasurer's address on file with the Board. Mr. Fisher reported that the committee's cash balance as of July 21, 2014, was \$1,523.59 and that no previous waivers had been granted to the committee.

After discussion, the following motion was made:

Member Beck's motion: To waive the late filing fee.

Vote on motion: Unanimously passed.

B. Request for Reconsideration of \$125 Late Filing Fee Waiver for 3/17/2014 Annual Principal Report – Timberland Transportation, Inc. d/b/a Priority Courier Experts.

Mr. Fisher said that the president of the association, Mr. Mark Cossack, said that he did not receive a notice that the report was due or the letter informing him that his waiver request was denied. Mr. Cossack did state that he received the late filing fee notice. Mr. Fisher reported that all of the notices had been sent to the same address on file with the Board and that no previous waivers had been granted to the principal.

After discussion, the following motion was made:

Member Peterson's motion: To waive the late filing fee.

Vote on motion: Unanimously passed.

C. Request for Reconsideration of \$50 Late Filing Fee Waiver for 6/16/2014 2nd Report – Progressive Conservative PAC.

Mr. Fisher reported that the preprinted form mailed to the committee contained a beginning cash balance that was off by \$.01. The treasurer believed that he should neither submit a false report nor change a preprinted form distributed by the Board. Because the treasurer did not begin preparing the report until after the Board's offices had closed on the date of the deadline, he could not seek guidance from Board staff. The treasurer waited until the next morning to try to speak to an individual at the Board's offices, but could not get through to anyone at that time. He therefore submitted the report with a corrected beginning cash balance. Mr. Fisher said that the committee's cash balance as of July 21, 2014, was \$542.06 and that no previous waivers had been granted to the committee.

After discussion, the following motion was made:

Member Sande's motion: To waive the late filing fee.

Vote on motion: Unanimously passed.

D. Request to Terminate with a Cash Balance in Excess of \$100 and Waive Late Filing Fee of \$150 for 6/16/2014 2nd Report – Local 1935 PAC.

Mr. Fisher told members that the Local 1935 PAC mistakenly believed that if the committee had registered with Ramsey County Elections, it also must register with the Board. The committee had no plans to get involved with state-level elections and had contributed only to local candidates. Mr. Fisher stated that the committee incurred a late filing fee of \$150 for the report due June 16, 2014. The committee's cash balance as of May 31, 2014, was \$220. Mr. Fisher said that the committee would continue reporting to Ramsey County Elections and that no previous waivers had been granted to the committee.

After discussion, the following motion was made:

Member Oliver's motion: To waive the late filing fee and allow the committee to terminate with a cash balance over \$100.

Vote on motion: Unanimously passed.

E. Request to Terminate with a Cash Balance Discrepancy – Brita Sailer Campaign Committee (Sailer for House 2B).

Mr. Fisher reported that the committee had a balance discrepancy of \$581.25 that could not be accounted for. Board records showed that the committee had \$1,315.88 in its account,

whereas the bank records showed that the account only contained \$734.63. Mr. Fisher stated that the committee had provided copies of checks disbursing the \$734.63 as described in its termination request.

After discussion, the following motion was made:

Member Sande's motion: To allow the committee to terminate with a cash balance discrepancy.

Vote on motion: Unanimously passed.

F. Request to Withdraw Registration

Commitment to Excellence Committee: Mr. Fisher reported that the committee had been formed to support a local school bond referendum. The bond referendum had been approved and the committee had been dissolved. Mr. Fisher stated that there was no need for the committee to have registered with the Board.

After discussion, the following motion was made:

Member Peterson's motion: To allow the committee to withdraw its registration.

Vote on motion: Unanimously passed.

G. SEIU PEA Fund: Mr. Fisher stated that the fund had not engaged, and did not expect to engage, in any activity that would require registration with the Board.

After discussion, the following motion was made:

Member Beck's motion: To allow the fund to withdraw its registration.

Vote on motion: Unanimously passed.

Waiver requests

<u>Name of Candidate or Committee</u>	<u>Late Fee Amount</u>	<u>Civil Penalty Amount</u>	<u>Reason for Fine</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
ZacPAC	\$100	\$0	2 nd Report 6/16/2014	Personal issues caused a change in residence which led to missing the notice. The treasurer has updated his address on file with the Board.	Sande	To waive the late fee.	Unanimous
Lake County RPM	\$50	\$0	Pre-Primary 7/28/2014	Software issues led to filing the report 19 minutes late.	Sande	To waive the late fee.	Unanimous

Wilkin County RPM	\$50	\$0	Pre-Primary 7/28/2014	Treasurer could not reach Board staff by telephone on Friday before the deadline or Monday deadline.	Sande	To waive the late fee.	Unanimous
AFSCME Local 2938	\$450	\$0	2 nd Report 6/16/2014	Treasurer was out of the country from June 7 until June 26. Notice was postmarked June 5, received by treasurer's office on June 9. Report filed on first day back.	Beck	To waive the late fee.	Unanimous
Independent Community Bankers of Minn PAC	\$450	\$0	2 nd Report 6/16/2014	Treasurer mistakenly believed he had uploaded report prior to deadline.	Peterson	To waive the late fee.	Not adopted (Wiener recused)
Minneapolis Downtown Council PAC	\$400	\$0	2 nd Report 6/16/2014	New treasurer began duties in March. Treasurer believed no activity had taken place during reporting period and believed they did not have to file a report.	Oliver	To waive the late fee.	Unanimous
Merrill Anderson Campaign Committee ¹	\$500	\$0	2 nd Report 6/16/2014	Committee is dealing with computer issues and could not load software.	Peterson	To waive the late fee.	Unanimous
East Central Taxpayers	\$100	\$0	2 nd Report 6/16/2014	Treasurer forgot to file report because there had been no change. Notice mailed to treasurer stated that report must be filed even if no financial transactions had taken place during the reporting period.	Sande	To waive the late fee.	Unanimous
Olmsted County Deputy Sheriff's Ass'n PF	\$100	\$0	2 nd Report 6/16/2014	Time constraints of employment and late receipt of statements contributed to late filing of report.	No motion		
Sprinkler Fitters Local 417	\$50	\$0	Pre-Primary 7/28/2014	An office staff member had been ill for an extended period of time.	No motion		

Approval of agreements to resolve staff reviews

Constitution Party of Minn

In an amended report, the Constitution Party of Minn disclosed that on August 2, 2012, it received a contribution from James Niemackl for Senate in the amount of \$400. An inquiry into the contribution showed that James Niemackl for Senate is a federally registered committee, which is an unregistered association under Chapter 10A.

In 2012, Minnesota Statutes section 10A.27, subdivision 13, prohibited a political committee from accepting a contribution from an unregistered association that exceeded \$100 unless the contributor also provided a written disclosure statement as required by that section. The appropriate disclosure was not provided with the James Niemackl for Senate contribution.

¹ Because the committee has already paid this late filing fee, granting the waiver request actually authorized reimbursement to the committee.

Mr. Goldsmith reminded the Board that it had previously approved resolution of this matter through an informal staff review process rather than through a formal investigation. Mr. Goldsmith explained that the political committee and the federal donor both had agreed to proceed through the staff review process and that an agreement had been entered into with each entity.

Mr. Goldsmith stated that the agreement with the Constitution Party of Minn lists certain measures that the committee will undertake to prevent future violations and imposes a \$300 civil penalty, \$200 of which will be stayed for a period of four years and then waived if no similar violation occurs during that period. A copy of the agreement is attached and made a part of these minutes.

James Niemackl for Senate (Federal Committee)

As stated above, the Constitution Party of Minn filed an amended report showing that on August 2, 2012, it received a contribution from James Niemackl for Senate in the amount of \$400. James Niemackl for Senate is a federally registered committee, which is an unregistered association under Chapter 10A. In 2012, Minnesota Statutes section 10A.27, subdivision 13, prohibited an unregistered association from making a contribution to a political committee that exceeded \$100 unless the unregistered association also provided a written disclosure statement as required by that section. The appropriate disclosure was not provided with the James Niemackl for Senate contribution.

Mr. Goldsmith stated that the agreement with James Niemackl for Senate lists certain measures that the association will undertake to prevent future violations and imposes a \$300 civil penalty, \$200 of which is stayed for a period of four years and then waived if no similar violation occurs. A copy of the agreement is attached and made a part of these minutes.

After discussion, the following motion was made:

Member Sande's motion: To approve the proposed agreements.

Vote on motion: Unanimously passed.

Informational Items

A. Payment of a late filing fee for candidate election year Economic Interest Statement:

Leon Lillie, \$50
Karen Housley, \$20
Dan Schoen, \$5
Chris Swedzinski, \$15
Roger Weber, \$5

B. Payment of a late filing fee for Original Economic Interest Statement:

Cari Girk, Pioneer-Sarah Creek Watershed District, \$30

C. Payment of a late filing fee April 14, 2014, Report of Receipts and Expenditures:

The Canary Party, \$175

D. Payment of a late filing fee June 16, 2014, Report of Receipts and Expenditures:

Merrill Anderson Campaign Committee, \$500
Keegan Iversen for State Auditor, \$100

Choice In Minn Healthcare, \$100
Duluth Active and Retired Teachers, \$150
Friends of DFL Women, \$100
IFAPAC, \$100
J L G PAC, \$50
Minn Ambulatory Surgery Center Assn, \$50
Minn Electrical Association PAC, \$100
Minn Thoroughbred Assn PAC Fund, \$100
Minneapolis Municipal Retirement Assn, \$100
MSCA PAC, \$350

E. Payment of a late filing fee July 28, 2014, Report of Receipts and Expenditures:

Jason Isaacson for Minnesota, \$50

F. Payment of a late filing fee for March 17, 2014, Annual Report of Lobbyist Principal 2013:

Continental Decatur LLC, \$75
Geronimo Wind Energy, \$275
HealthEast, \$75
Natl Assn of Settlement Purchasers, \$125
Pepito's Restaurant/Parkway Theater, \$25
Professional Home Care Coalition, \$125

G. Payment of a late filing fee for June 16, 2014, lobbyist disbursement report:

Bradford Allinson, Quantitative Management Assn, \$25
Kelly Beadle, America Votes, \$25
Ray Bohn, All Terrain Vehicles of MN, MN Assn of Watershed Districts, \$50
Christopher Chandler, Prudential Financial, \$25
Carl Crimmins, LogisticCare Solutions, MN Pipe Trades, Ticket Network, \$75
Rhonda Degelau, MN Assn of Comm Health Centers, \$25
Dennis Egan, MN Private College Council Minn for Safe Fireworks, \$100
Doug Franzen, MN United Snowmobilers, N Metro Harness Initiative, Salvation Army, City of St Louis Park, \$100
Bill Heaney, IBEW MN State Council, \$75
John Kaul, Washington Cty, Rochester Publ Schools, MN Trans Alliance, MN Hosp Assn, Metro
Mosquito Control Dist, \$125
Ann Kilzer, Assn of MN Counties, \$25
Gail Kulick, Mille Lacs Band of Ojibwe, \$175

H. Payment of a civil penalty for corporate contribution:

Freeborn County RPM, \$250

I. Deposit to the General Fund, State Elections Campaign Fund:

Cindy Pugh for Minnesota, \$717.36 anonymous

Mark Uglem Candidate Committee, \$100 anonymous

RULEMAKING

Mr. Goldsmith presented members with a memorandum describing the data privacy classifications applicable under the proposed rules. This memorandum is attached to and made a part of these minutes. Mr. Goldsmith explained that under the current version of the proposed rules, staff reviews were not investigations and therefore were not confidential under the data privacy laws.

Members expressed concern that people could abuse a public staff review process by calling these procedures "investigations" in a press conference. Members also discussed the possibility that the public nature of a staff review would violate the confidentiality provisions of the statute. Members also expressed frustration with the new statutory provision requiring a prima facie determination for every complaint, even those involving violations that already had been resolved by amendment. Members discussed the fact that under the current statutory scheme, even a frivolous or remedied complaint would be active for at least two months because that was the minimum amount of time necessary to complete the prima facie and probable cause determinations required by the new statute.

LEGAL COUNSEL'S REPORT

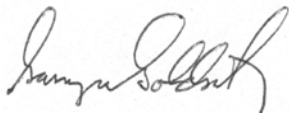
Ms. Eller had nothing to add to the provided report.

EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the executive session. Upon completion of the executive session, the regular session of the meeting was called back to order and the Chair had nothing to report into regular session.

OTHER BUSINESS

There being no other business, the meeting was adjourned by the Chair.



Gary Goldsmith
Executive Director

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Attachments:

Affirmative Action Plan

Agreement with Constitution Party of Minn to resolve matter under staff review

Agreement with James Niemackl for Senate to resolve matter under staff review

Memorandum regarding data privacy classifications under proposed rules

STATE OF MINNESOTA

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

Affirmative Action Plan

August 2014 – August 2016

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I. STATEMENT OF COMMITMENT

This statement reaffirms that the Campaign Finance and Public Disclosure Board is committed to Minnesota's statewide affirmative action efforts and providing equal employment opportunity to all employees and applicants in accordance with equal opportunity and affirmative action laws.

I affirm my personal and official support of these policies which provide that:

- No individual shall be discriminated against in the terms and conditions of employment, personnel practices, or access to and participation in programs, services, and activities with regard to race, sex, color, creed, religion, age, national origin, sexual orientation, disability, marital status, status with regard to public assistance, or membership or activity in a local human rights commission.
- This Board is committed to the implementation of the affirmative action policies, programs, and procedures included in this plan to ensure that employment practices are free from discrimination. Employment practices include, but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, disciplinary action, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. We will provide reasonable accommodation to employees and applicants with disabilities.
- This Board will continue to actively promote a program of affirmative action, wherever minorities, women, and individuals with disabilities are underrepresented in the workforce, and work to retain all qualified, talented employees, including protected group employees.
- This Board will evaluate its efforts, including those of its directors, managers, and supervisors, in promoting equal opportunity and achieving affirmative action objectives contained herein. In addition, this Board will expect all employees to perform their job duties in a manner that promotes equal opportunity for all.

It is the Board's policy to provide an employment environment free of any form of discriminatory harassment as prohibited by federal, state, and local human rights laws. I strongly encourage suggestions as to how we may improve. We strive to provide equal employment opportunities and the best possible service to all Minnesotans.

July 17, 2014



Gary Goldsmith
Executive Director

II. INDIVIDUALS RESPONSIBLE FOR DIRECTING/IMPLEMENTING THE AFFIRMATIVE ACTION PLAN

A. Executive Director

Gary Goldsmith

The Executive Director, Gary Goldsmith, is responsible for oversight of the policies contained in this Affirmative Action Plan and complying with all federal and state equal opportunity laws and regulations.

Accountability:

The Executive Director is accountable directly to the Campaign Finance and Public Disclosure Board and indirectly to the Minnesota Management and Budget Commissioner on matters pertaining to equal opportunity and affirmative action.

B. Affirmative Action Officer/Americans with Disabilities Act Coordinator

Jodi Pope, Legal/Management Analyst

Responsibilities:

The Affirmative Action Officer or designee is responsible for implementation of the policies contained in the Board's Affirmative Action Plan, and oversight of the Board's compliance with equal opportunity and affirmative action laws.

The Americans with Disabilities Act Coordinator or designee is responsible for the oversight of the Board's compliance with the Americans with Disabilities Act Title I – Employment and Title II – Public Services, in accordance with the Americans with Disabilities Act - as amended, the Minnesota Human Rights Act, and Executive Order 96-09.

C. All Employees

Responsibilities:

All employees are responsible for conducting themselves in accordance with the Board's equal opportunity and Affirmative Action Plan and policies.

III. POLICY PROHIBITING DISCRIMINATION AND HARASSEMENT

It is the policy of the State of Minnesota and the Campaign Finance and Public Disclosure Board to prohibit harassment of its employees based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights, disability, sexual orientation, or age. This prohibition with respect to harassment includes both overt acts of harassment and those acts that create a negative work environment.

Any employee subjected to such harassment should file a complaint internally with the Board's Affirmative Action Officer or designee. If the employee chooses, a complaint can be filed externally with the Minnesota Department of Human Rights, the Equal Employment

Opportunity Commission, or through other legal channels. These agencies have time limits for filing complaints, so individuals should contact the agencies for more information. In extenuating circumstances, the employee should contact the State Affirmative Action Program Coordinator in the Office of Equal Opportunity and Diversity at Minnesota Management and Budget for information regarding the filing of a complaint. Any unintentional or deliberate violation of this policy by an employee will be cause for appropriate disciplinary action.

Each employee is responsible for the application of this policy. This includes initiating and supporting programs and practices designed to develop understanding, acceptance, commitment, and compliance within the framework of this policy. All employees must be informed that harassment is unacceptable behavior. The Affirmative Action Officer or designee will be expected to keep the Campaign Finance and Public Disclosure Board and its employees apprised of any changes in the law or its interpretation regarding this form of discrimination. The Affirmative Action Officer or designee is also responsible for:

Notifying all employees and applicants of this policy; and

Informing all employees of the complaint procedure and ensuring that all complaints will be investigated promptly and carefully.

Definitions:

Discriminatory harassment is any behavior based on protected class status which is not welcome, which is personally offensive, which, therefore, may effect morale and interfere with the employee's ability to perform. For example, harassment based on national origin has been defined by the U.S. Equal Employment Opportunity Commission as "ethnic slurs and other verbal or physical conduct relating to an individual's national origin."

Sexual harassment has also been specifically defined by the Minnesota Human Rights Act, which states in regard to employment, that:

"Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

- Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment;
- Submission to or rejection of that conduct or communication by an individual is used as a factor in decision affecting that individual's employment; or
- That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

It is possible for discriminatory harassment to occur:

- Among peers or coworkers;

- Between managers and subordinates; or
- Between employees and members of the public.

Employees who experience discrimination or harassment should bring the matter to the attention of the Board's Affirmative Action Officer or designee. In fulfilling our obligation to maintain a positive and productive work environment, the Affirmative Action Officer or designee and all employees are expected to address or report any suspected harassment or retaliation.

Varying degrees of discriminatory harassment violations can occur and require varying levels of progressive discipline. Individuals who instigate harassment are subject to serious disciplinary actions up to and including suspension, demotion, transfer, or termination. Additionally, inappropriate behaviors that do not rise to the level of discriminatory harassment, but are none the less disruptive, should be corrected early and firmly in the interests of maintaining a barrier-free work place. Individuals who participate in inappropriate behaviors at work are also subject to disciplinary actions.

Any employee or applicant who believes that she/he has experienced discrimination or harassment based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age may file a complaint of discrimination.

Complaints of discrimination or harassment can be filed using the internal complaint procedure included in this Affirmative Action Plan.

IV. COMPLAINT PROCEDURE FOR PROCESSING COMPLAINTS FOR ALLEGED DISCRIMINATION/HARASSMENT

The Board has established the following discrimination/harassment complaint procedure to be used by all employees and applicants. Coercion, reprisal, or intimidation against anyone filing a complaint or serving as a witness under this procedure is prohibited.

Responsibility of Employees:

All employees shall respond promptly to any and all requests by the Affirmative Action Officer or designee for information and for access to data and records for the purpose of enabling the Affirmative Action Officer or designee to carry out responsibilities under this complaint procedure. The failure of any employee to comply with the requests of the Affirmative Action Officer or designee shall be reported to the Executive Director.

Who May File:

Any employee or applicant who believes that she/he has been discriminated against or harassed by reason of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age may file a complaint. Employees who are terminated are encouraged to file their internal complaint prior to their actual separation; however, complaints will be taken for a reasonable period of time subsequent to the actual separation date.

Complaint Procedure:

The internal complaint procedure provides a method for resolving complaints involving violations of this Board's policy prohibiting discrimination and harassment within the agency. Employees and applicants are encouraged to use this internal complaint process. If the employee chooses, she/he may file a complaint externally with the Minnesota Department of Human Rights, the Equal Employment Opportunity Commission, or through other legal channels. Retaliation against an individual who has filed a complaint either internally or through an outside enforcement Board or other legal channels is prohibited. The Affirmative Action Officer or designee may contact the Office of Diversity and Equal Opportunity if more information is needed about filing a complaint.

Filing Procedures:

1. The employee or applicant completes the "Complaint of Discrimination/Harassment Form" provided by the Affirmative Action Officer or designee. Employees are encouraged to file a complaint within a reasonable period of time after the individual becomes aware that a situation may involve discrimination or harassment. The Affirmative Action Officer or designee will, if requested, provide assistance in filling out the form.
2. The Affirmative Action Officer or designee determines if the complaint falls under the purview of Equal Employment Opportunity law, i.e., the complainant is alleging discrimination or harassment on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age; or if the complaint is of a general personnel concern. The Affirmative Action Officer or designee shall also discuss other options for resolution, such as workplace mediation.
 - If it is determined that the complaint is not related to discrimination but rather to general personnel concerns, the Affirmative Action Officer designee will inform the complainant, in writing, within ten (10) working days and refer the complainant to the Executive Director or the Assistant Executive Director to handle the complaint.
 - If the complaint is related to discrimination, the Affirmative Action Officer or designee will, within ten (10) working days, contact all parties named as respondents and outline the basic facts of the complaint. The respondents will be asked to provide a response to the allegations within a specific period of time.
3. The Affirmative Action Officer or designee shall then investigate the complaint. At the conclusion of the investigation, the Affirmative Action Officer or designee shall notify the complainants and respondents that the investigation is completed. The Affirmative Action Officer or designee shall then review the findings of the investigation.
 - If there is sufficient evidence to substantiate the complaint, appropriate action will be taken.
 - If insufficient evidence exists to support the complaint, a letter will be sent to the complainants and the respondents dismissing the complaint.

4. A written answer will be provided to the parties within sixty (60) days after the complaint is filed. The complainants will be notified should extenuating circumstances prevent completion of the investigation within sixty (60) days.
5. Disposition of the complaint will be filed with the Commissioner of the Minnesota Management and Budget within thirty (30) days after the final determination.
6. All documentation associated with a complaint shall be considered investigative data under the Minnesota Government Data Practices Act. The status of the complaint will be shared with the complainants and respondents. After an investigation is completed and all appeals are exhausted, all documentation is subject to the provisions of the Minnesota Government Data Practices Act.
7. All data collected may at some point become evidence in civil or criminal legal proceedings pursuant to state or federal statutes. An investigation may include, but is not limited to, the following types of data:
 - Interviews or written interrogatories with all parties involved in the complaint, such as complainants, respondents, and their respective witnesses; officials having pertinent records or files, etc.; and
 - All records pertaining to the case, written, recorded, filmed, or in any other form.
8. The Affirmative Action Officer or designee shall maintain records of all complaints and any pertinent information or data for three (3) years after the case is closed.

V. REASONABLE ACCOMMODATION POLICY

The State of Minnesota and the Board are committed to the fair and equal employment of individuals with disabilities. Reasonable accommodation is the key to this nondiscrimination policy. While many individuals with disabilities can work without accommodation, other qualified employees and applicants face barriers to employment without the accommodation process. It is the policy of the Board to reasonably accommodate qualified individuals with disabilities unless the accommodation would impose an undue hardship.

In accordance with the Minnesota Human Rights Act and the Americans with Disabilities Act, as amended, accommodations will be provided to qualified individuals with disabilities when such accommodations are directly related to performing the essential functions of a job, competing for a job, or to enjoy equal benefits and privileges of employment. This policy applies to all applicants, employees, and employees seeking promotional opportunities.

Definitions:

Disability: For purposes of determining eligibility for a reasonable accommodation, an individual with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities; or a record of such an impairment; or being regarded as having such an impairment.

Reasonable Accommodation: A reasonable accommodation is a modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to enjoy an equal employment opportunity.

Examples of accommodations may include acquiring or modifying equipment or devices, modifying training materials, making facilities readily accessible, modifying work schedules, and reassignment to a vacant position.

Reasonable accommodation applies to three (3) aspects of employment:

- To assure equal opportunity in the employment process;
- To enable a qualified individual with a disability to perform the essential functions of a job; and
- To enable an employee with a disability to enjoy equal benefits and privileges of employment.

Undue hardship: An undue hardship is an action that is unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of this Board.

Procedure for Current Employees and Employees Seeking Accommodation:

1. This Board will inform all employees that this accommodation policy can be made available in accessible formats.
2. The employee shall inform her/his supervisor or the ADA Coordinator or designee of the need for an accommodation by submitting a Request for Accommodation form.
3. The ADA Coordinator or designee may request documentation of the individual's functional limitations to support the request. Any medical documentation must be collected and maintained on separate forms and in separate, locked files. No one will be told or have access to medical information unless the disability might require emergency treatment.
4. When a qualified individual with a disability has requested an accommodation, the employer shall, in consultation with the individual:
 - Discuss the purpose and essential functions of the particular job involved. Completion of a step-by-step job analysis may be necessary;
 - Determine the precise job-related limitation;
 - Identify the potential accommodations and assess the effectiveness each would have in allowing the individual to perform the essential functions of the job; and
 - Select and implement the accommodation that is the most appropriate for both the individual and the employer. While an individual's preference will be given

consideration, the Board is free to choose among equally effective accommodations and may choose the one that is less expensive or easier to provide.

5. The ADA Coordinator or designee will work with the employee to obtain technical assistance, as needed.
6. The ADA Coordinator or designee will provide a decision to the employee within five business days after receiving the request, unless the ADA Coordinator notifies the employee that a reasonable additional period of time is required to provide the decision.
7. If an accommodation cannot overcome the existing barriers or if the accommodation would cause an undue hardship on the operation of the business, the ADA Coordinator or designee will forward the request along with a recommendation to the Executive Director within three working days. The Executive Director and the employee shall work together to determine whether reassignment may be an appropriate accommodation.

Procedure for Job Applicants:

1. The job applicant shall inform the ADA Coordinator or designee of the need for an accommodation. The ADA Coordinator or designee will discuss the needed accommodation and possible alternatives with the applicant.
2. The ADA Coordinator or designee will make a decision regarding the request for accommodation and, if approved, take the necessary steps to see that the accommodation is provided.

Policy for Funding Accommodations:

Funding must be approved by the Executive Director for accommodations that do not cause an undue hardship.

Procedure for Determining Undue Hardship:

In determining whether or not providing a reasonable accommodation would impose an undue hardship, the Board will consider at least the following factors:

- Overall size of the program (number and type of facilities, size of budget);
- Type of the operation including the composition and structure of the work force;
- Nature and cost of the accommodation needed;
- Reasonable ability to finance the accommodation; and
- Documented good-faith efforts to explore less restrictive or less expensive alternatives including consultation with the individual with the disability or with knowledgeable individuals with disabilities or organizations.

The ADA Coordinator or designee will provide a decision to the employee subject to the Executive Director's review and approval of funds.

Appeals:

Employees or applicants who are dissatisfied with the decisions pertaining to an accommodation request may file an appeal with the Executive Director or Board Chair, within a reasonable period of time, for a final decision.

If the individual believes the decision is based on discriminatory reasons, she/he may file a complaint internally through the Board's complaint procedure as outlined in this plan.

Supported Work:

Based on the size of the Board staff, there is no opportunity at this time to participate in the Supported Worker Program. Staff will work with the Department of Employee Relations if an opportunity arises in the future to use this program.

WEATHER EMERGENCIES

Notices of weather-related threats are initiated by the national Weather Service (NWS). NWS and local broadcasts are monitored by Capitol Complex Security who in the event of an emergency will inform employees and issue relocation orders. Relocation will take place according to the Emergency Evacuation Plan for the Centennial Office Building.

All present employees who are deaf/hard of hearing will receive notification, by the supervisor or designated backup staff in the case of an emergency.

In the case of winter storms, all employees are asked to monitor local radio and television stations for the closure of state offices.

All employees who are deaf/hard of hearing or speech impaired that use TTY's and are not at work when an emergency is called, will be informed of the emergency by their supervisor through the Minnesota Relay Service (800) 627-3529.

BUILDING EVACUATION

Board staff follows the emergency evacuation plan for the Centennial Office Building created by the Department of Public Safety Capitol Security and Department of Employee Relations, revised February, 2001.

Each employee is provided with a copy of the emergency evacuation procedures upon employment. The emergency plan is reviewed with staff, annually, at a staff meeting.

Employees who are mobility or sensory impaired are assigned an assistant to assist them in the evacuation.

APPENDIX

A. Complaint of Discrimination/Harassment Form

COMPLAINT OF DISCRIMINATION/HARASSMENT FORM

Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar St.
St. Paul, MN 55155-1603
(651) 539-1180

PLEASE READ BEFORE COMPLETION OF FORM

Any complaint of discrimination/harassment is considered confidential data under Minnesota Statutes section 13.39, subdivision 1 and 2. This information is being collected for the purpose of determining whether discrimination/harassment has occurred. You are not legally required to provide this information, but without it, an investigation cannot be conducted. This information may only be released to the Executive Director, Affirmative Action Officer or designee, the complainant, the respondent, and appropriate personnel.

Complainant (You)		
Name	Job Title	
Work Address	City, State, Zip Code	Telephone
Agency	Division	Manager/Supervisor's Name

Respondent (Individual Who Discriminated Against/Harassed You)		
Name	Job Title	
Work Address	City, State, Zip Code	Telephone
Agency	Division	Manager/Supervisor's Name

The Complaint

Basis of Complaint (Place an "X" in the box for all that apply):

<input type="checkbox"/> Race	<input type="checkbox"/> Disability	<input type="checkbox"/> Sexual Orientation
<input type="checkbox"/> Sex (Gender)	<input type="checkbox"/> Marital Status	<input type="checkbox"/> Status with Regard to Public Assistance
<input type="checkbox"/> Age	<input type="checkbox"/> National Origin	<input type="checkbox"/> Membership or Activity in a Local Human Rights Commission
<input type="checkbox"/> Color	<input type="checkbox"/> Creed	<input type="checkbox"/> Religion

Date most recent act of discrimination or harassment took place:

If you filed this complaint with another agency, give the name of that agency:

Describe how you believe that you have been discriminated or harassed against (names, dates, places, etc.). Use a separate sheet of paper if needed and attach to this form.

Information on Witnesses Who Can Support Your Case

Name	Work Address	Work Telephone
1.		
2.		
3.		

Additional witnesses may be listed in "Additional Information" or on a separate sheet attached to this form.

This complaint is being filed on my honest believe that the State of Minnesota has discriminated against or harassed me. I hereby certify that the information I have provided in this complaint is true, correct and complete to the best of my knowledge and belief.

Signatures	
Complainant Signature	Date
Affirmative Action Officer Signature	Date

B. Employee/Applicant Request for ADA Reasonable Accommodation Form



STATE OF MINNESOTA – CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

EMPLOYEE/APPLICANT REQUEST FOR ADA REASONABLE ACCOMMODATION FORM

The State of Minnesota is committed to complying with the Americans with Disabilities Act (“ADA”) and the Minnesota Human Rights Act (“MHRA”). To be eligible for an ADA accommodation, you must be 1) qualified to perform the essential functions of your position and 2) have a disability that limits a major life activity or function. The ADA Coordinator/Designee will review each request on an individualized case-by-case basis to determine whether or not an accommodation can be made.

Employee/Applicant Name:	Job Title:
Work Location:	Phone Number:

Data Privacy Statement: This information may be used by your agency human resources representative, ADA Coordinator or designee, your agency legal counsel, or any other individual who is authorized by your agency to receive medical information for purposes of providing reasonable accommodations under the ADA and MHRA. This information is necessary to determine whether you have a disability as defined by the ADA or MHRA, and to determine whether any reasonable accommodation can be made. The provision of this information is strictly voluntary; however, if you refuse to provide it, your agency may refuse to provide a reasonable accommodation.

Questions to clarify accommodation requested.

1. What specific accommodation are you requesting?
2. If you are not sure what accommodation is needed, do you have any suggestions about what options we can explore.
 - a. If yes, please explain.

Questions to document the reason for the accommodation request *(please attach additional pages if necessary)*.

1. What, if any job function are you having difficulty performing?

**State of Minnesota – Campaign Finance and Public Disclosure Board
Reasonable Accommodation Request Form, Page 2**

2. What, if any employment benefit are you having difficulty accessing?

3. What limitation as result of your physical or mental impairment is interfering with your ability to perform your job or access an employment benefit?

4. If you are requesting a specific accommodation, how will that accommodation be effective in allowing you to perform the functions of your job?

Information Pertaining to Medical Documentation

In the context of assessing an accommodation request, medical documentation may be needed to determine if the employee has a disability covered by the ADA and to assist in identifying an effective accommodation.

The ADA Coordinator or designee in each agency is tasked with collecting necessary medical documentation. In the event that medical documentation is needed, the employee will be provided with the appropriate forms to submit to their medical provider. The employee has the responsibility to ensure that the medical provider follows through on requests for medical information.

This authorization does not cover, and the information to be disclosed should not contain, genetic information. “Genetic Information” includes: Information about an individual’s genetic tests; information about genetic tests of an individual’s family members; information about the manifestation of a disease or disorder in an individual’s family members (family medical history); an individual’s request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; and genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

Employee/Applicant Signature:	Date:
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**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**AGREEMENT TO RESOLVE
MATTER UNDER STAFF REVIEW
#1006**

In the Matter of the Constitution Party of Minn (Registration No. 40855);

1. A routine staff review by the Minnesota Campaign Finance and Public Disclosure Board of the Constitution Party of Minn's 2012 amended year-end Report of Receipts and Expenditures revealed a contribution which, as reported, may have constituted a violation of Minnesota Statutes, Chapter 10A.
2. The Constitution Party of Minn reported that on August 2, 2012, it received a contribution from James Niemackl for Senate in the amount of \$400. An inquiry into the contribution led to the discovery that James Niemackl for Senate is a federally registered committee, which constitutes an unregistered association under Chapter 10A.
3. In 2012, Minnesota Statutes section 10A.27, subdivision 13, prohibited a political committee from accepting a contribution from an unregistered association that exceeded \$100 unless the contributor also provided a written disclosure statement as required by that section. The appropriate disclosure was not provided with the James Niemackl for Senate contribution.
4. To resolve this matter informally and to avoid these violations in the future the Constitution Party of Minn agrees that it will:
 - a. Return the \$400 contribution to James Niemackl for Senate within 30 days and provide a copy of the check and letter used to return the contribution to the Board;
 - b. Send its treasurer to attend the Board's in-person compliance training within 3 months of the date this agreement is approved by the Board;
 - c. Continue to use the CFR software provided by the Board for filing reports and amendments for a period of 4 years;
 - d. Not accept any contributions from associations that are unregistered with the Board for a period of 4 years;
 - e. Within 30 days provide a copy of the committee's 2012 and 2013 year-end bank statements and a statement reconciling the balance shown on those statements with the committee's ending cash balances reported to the board for 2012 and 2013.

5. The Constitution Party of Minn agrees that the Board's acceptance of this agreement constitutes the imposition of a civil penalty in the amount of \$300 against the Constitution Party of Minn for accepting a contribution that was \$300 more than it was permitted to accept without the disclosure required by Minnesota Statutes section 10A.27, subdivision 13. \$100 of the penalty is due within 30 days of the date the agreement is approved by the Board. \$200 of the penalty is, by the terms of this agreement, stayed for a period of four years from the date the agreement is approved by the Board. If the Constitution Party of Minn violates Minnesota Statutes section 10A.27, subdivision 13 within four years of the date the agreement is approved by the Board, the outstanding civil penalty is due immediately. If the Constitution Party of Minn does not violate Minnesota Statutes section 10A.27, subdivision 13 within four years of the date the agreement is approved by the Board, the outstanding civil penalty is waived.

6. If the Constitution Party of Minn does not comply with the provisions of this agreement, this matter may be reopened by the Board and the Board may take such actions as it deems appropriate.

_____ Dated: _____
James Niemackl, Treasurer
Constitution Party of Minn

_____ Dated: _____
Gary Goldsmith, Executive Director
Campaign Finance and Public Disclosure Board

Agreement approved by Board at meeting of _____, 2014

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**AGREEMENT TO RESOLVE
MATTER UNDER STAFF REVIEW
#1007**

In the Matter of James Niemackl for Senate;

1. A routine staff review by the Minnesota Campaign Finance and Public Disclosure Board of the Constitution Party of Minn's 2012 amended year-end Report of Receipts and Expenditures revealed a contribution which, as reported, may have constituted a violation of Minnesota Statutes, Chapter 10A.
2. The Constitution Party of Minn reported that on August 2, 2012, it received a contribution from James Niemackl for Senate in the amount of \$400. An inquiry into the contribution led to the discovery that James Niemackl for Senate is a federally registered committee, which constitutes an unregistered association under Chapter 10A.
3. In 2012, Minnesota Statutes section 10A.27, subdivision 13, prohibited an unregistered association from making a contribution to a political committee that exceeded \$100 unless the unregistered association also provided a written disclosure statement as required by that section. The appropriate disclosure was not provided with the James Niemackl for Senate contribution.
4. To resolve this matter informally and to avoid these violations in the future James Niemackl for Senate agrees that it will:
 - a. Refrain from making political contributions to committees that are registered in Minnesota without providing the required written disclosure. The candidate understands that contributions made by his federal committee are not the same as personal contributions regardless of whether the source of funds in the federal committee mainly consists of personal contributions.
5. James Niemackl for Senate agrees that the Board's acceptance of this agreement constitutes the imposition of a civil penalty in the amount of \$300 against James Niemackl for Senate for making a contribution that was \$300 more than it was permitted to give without the disclosure required by Minnesota Statutes section 10A.27, subdivision 13. \$100 of the penalty is due within 30 days of the date the agreement is approved by the Board. \$200 of the penalty is, by the terms of this agreement, stayed for a period of four years from the date the agreement is approved by the Board. If James Niemackl for Senate violates Minnesota Statutes section 10A.27, subdivision 13 within four years of the date the agreement is approved by the Board, the outstanding civil penalty is due immediately. If James Niemackl for Senate does not violate

Minnesota Statutes section 10A.27, subdivision 13 within four years of the date the agreement is approved by the Board, the outstanding civil penalty is waived.

6. If James Niemackl for Senate does not comply with the provisions of this agreement, this matter may be reopened by the Board and the Board may take such actions as it deems appropriate.

_____ Dated: _____
James Niemackl, Candidate
James Niemackl for Senate

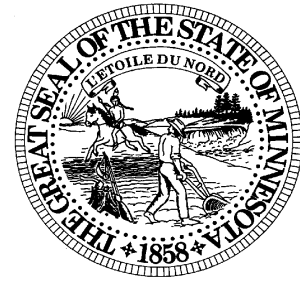
_____ Dated: _____
Gary Goldsmith, Executive Director
Campaign Finance and Public Disclosure Board

Agreement approved by Board at meeting of _____, 2014

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

Minnesota

Campaign Finance and Public Disclosure Board



Date: August 8, 2014

To: Board members

From: Gary Goldsmith
Executive Director

Telephone: 651-539-1183

Re: Data privacy classifications under the proposed new rules

At the July Board meeting, members asked for a review and analysis of how the existing statutes and newly proposed rules would work together to control whether a Board proceeding related to a violation would be confidential or public.

Public versus confidential data; open and closed meetings

The starting point for a review of data classification is the Minnesota Government Data Practices Act, which provides that all government data is public unless another statute or law makes the data not public. In the Board's case, the provisions of Chapter 10A override the Data Practices Act to make data related to investigations and audits confidential.

The Open Meeting Law also applies to the Board, requiring the Board to conduct its business in public unless there is a specific statutory exception. The confidentiality provisions of Chapter 10A provide an exception for audits and investigations, which are conducted in a confidential proceeding.

Because Chapter 10A's confidentiality provisions apply only to "audits" and "investigations", any type action by the Board in a proceeding that the Board does not characterize as an audit or investigation would be taken at a public meeting and any documents related to the proceeding would be public data.

In evaluating the effect of a proceeding being public versus confidential, it is important to remember that the Data Practices Act applies to "data", which typically takes the form of documents, including email or other electronic communications. Thus, to say that a proceeding is subject to the Data Practices Act, only means that documents developed during that proceeding are public. Telephone conversations, staff meetings, and meetings with the parties are not "data" and will be conducted in private as they have been in the past.

Additionally, the Open Meetings Law applies to the Board itself, not to staff conducting the ongoing operations of the Board. Thus even in an informal review, the activities, meetings, and conversations of staff are not public.

Application of these two concepts makes it clear that classifying a proceeding as something other than an "audit" or an "investigation" has a somewhat more limited effect than might initially be understood. Staff reviews will generate little government data and the activities involved in conducting the review will not be subject to the open meetings law. The most significant document generated will be the agreement between the Executive Director and the respondent, which will be public and will be discussed in an open Board meeting.

A Staff review will typically involve a matter that is disclosed on a publicly filed report and is obviously a violation. The public interest is probably better served by allowing the public to know that the Board is inquiring into such matters. The alternative is to respond to a citizen inquiry with a statement that the Board cannot say whether or not it is taking any action on an obvious violation.

What is an investigation and how has the Board used the term historically?

Historically any formal inquiry into an apparent violation, even if not arising from a complaint or board-ordered investigation, has been called an "investigation." Thus, when staff sees a prohibited transaction on a report, the treasurer is notified that the Board is conducting "an investigation". This action is taken by the Executive Director without specific Board authorization. Although current staff were not a part of the agency's management when this approach first started, we believe that the authority exists through Chapter 10A, subdivision 9, which requires the Executive Director to inspect all material filed with the Board to ensure compliance with Chapter 10A. We have no record of whether this approach was elected to provide confidentiality to the process or simply because the Board in its early years did not consider that it might resolve matters through some process other than a formal investigation.

These staff-initiated investigations of routine, self-reported, violations were resolved by the Board's adoption of findings or entry into conciliation agreements, depending on which statute was violated. (Chapter 10A requires the use of conciliation agreements to resolve most limits violations and findings to resolve most other violations.)

There is nothing in Chapter 10A that *requires* an Executive Director inquiry to be called an investigation or to result in findings. In fact, informal "pre-investigation" telephone calls are often made by staff to attempt to resolve matters prior to the initiation of a formal Executive Director-initiated investigation. Presumably any notes or record of these pre-investigation contacts, which are usually done through phone calls or email, is and has always been public (although we have never had a data request for such information). Only when the Executive Director determines that a violation is going to be subject to an *investigation* have the confidentiality provisions of Chapter 10A been given application.

Why can't an investigation end with an agreement rather than with findings and an order?

Historically it has been the Board's understanding that an investigation must end with findings or a conciliation agreement as a prerequisite to anything about the matter to becoming public. This interpretation is based on section 10A.02, subdivision, 11, paragraph (d), which provides that "[a] hearing before the Board or [an] action of the Board concerning a complaint or investigation other than findings, conclusions, and orders or a conciliation agreement is confidential." To make the official record of the investigation public, the Board incorporates the record into the findings by reference.

Based on the statutory mandate that only findings or a conciliation agreement make the facts about an investigation public, staff's understanding has been that if a matter is to be resolved through a means other than findings and an order, it must start out as something other than an investigation or audit. If it is an investigation, but there are no findings, the statutes do not provide a means for the matter to become public. In fact, the Board has conducted investigations that it has closed without findings and which, as a result, remain confidential (this applies only to Board-initiated investigations; under current practice complaints are always concluded with findings).

The proposed rules, which call for informal resolution of many common matters, take the position that a staff review is not an investigation. Because it is not an investigation, the review can be concluded through informal agreement. However, also because it is not an investigation, any data

collected in the process of the review is public and the matter will be discussed by the Board in an open meeting.

What is changing under the rules?

The most significant change under the proposed rules is that these Executive Director-initiated investigations will no longer be handled as *investigations*, but will be handled through less formal staff reviews. Rather than resulting in formal findings, they will typically result in agreements between the violator and the Executive Director, subject to acceptance by the Board. Because they are not investigations, any documents produced will be public. The Open Meetings Law does not apply to staff work, so no change will result in how the review is conducted. The Board discussion of the resulting agreement will be in a public meeting.

Board-initiated investigations and audits will not change

Nothing in the proposed rules changes how Board-initiated investigations or audits are initiated, conducted, or concluded.

As in the past, the Executive Director may bring matters to the Board in executive session and request authority to conduct an investigation or audit. If authorized, the investigation or audit will be conducted as a confidential proceeding as has been the case historically. The matter will conclude either by the Board issuing findings or issuance of an audit report or by the Board closing the matter, in which case it will remain confidential.

Staff has not identified any scenario in which a Board-initiated investigation or audit would change from a confidential proceeding to a public proceeding.

Complaints accepted for formal investigation

Under the proposed rules, the Board's decision as to how to handle a complaint will be made at the time of the probable cause determination. If the Board determines that there is probable cause to believe that a violation has occurred, and that the matter warrants a formal investigation, the Executive Director will be directed to conduct the investigation.

Once a formal investigation has been ordered, it will be carried out to its conclusion and findings and an order will be issued. The rules provide for the option of summary proceedings at any time, so it is possible that an investigation could be resolved through stipulation, settlement agreement, admission of violation, or other agreement. Each of these approaches could be accomplished while remaining in the confidential investigation process. Staff has not identified a scenario in which a matter for which the Board ordered a formal investigation of a complaint would later be reduced to an informal, public proceeding.

Complaints related to minor or obvious violations

Under the proposed rules, not all complaints will necessarily be subject to formal investigations. In the case of a complaint alleging a minor violation, a violation that is admitted, or a violation that is obvious based on a filed report, the Board may offer the subject of the complaint the opportunity to resolve the matter through informal agreement rather than through a formal investigation concluding with findings. Staff has a great deal of experience with these types of investigations since they are the ones typically initiated by the Executive Director under current practice. Based on its experience, staff would recommend that the Board proceed with a formal investigation if there is any potential for the matter to become more significant than is obvious from the complaint.

If the Board relegates only straightforward and clear violations to the informal process, it is unlikely that the Executive Director would ever need to return to the Board and request that the matter be handled as a formal investigation. Nevertheless, the rules provide for such a possibility should the need arise.

The Board remains in control of the staff reviews

The Executive Director is given some authority to initiate staff reviews on his or her own. However, the provision of the rules delegating that authority is prefaced by the phrase "unless otherwise directed by the Board." The insertion of this phrase was to ensure that the Board always had the authority to control the scope of the Executive Director's actions in conducting staff reviews. Initially the Board could direct the Executive Director to bring all matters to the Board for a determination of whether to proceed through a formal investigation or a staff review.

The Board retains its general authority

The rules also provide that the rules do not affect the Board's authority under section 10A.02 to order investigations and audits or to direct the Executive Director to initiate staff reviews or other proceedings.

Staff assumptions

Staff has many years of experience in handling common violations. It is usually clear from the beginning of an inquiry whether there is a real dispute over whether a violation occurred or not.

The Executive Director will exercise care in deciding whether to initiate staff reviews. In matters where there is a potential that an investigation will be needed, the Executive Director will bring the matter to the board for consideration of an investigation before starting a staff review.

Once the Board has more experience, the practice will become better understood. However, even the limited experience with the several matters that the Board has approved for staff review suggests that the system will work as intended.

Problems with the statute taking too much discretion away from the Board.

Staff notes that the new statutory requirements take away the Board's ability to promptly dispose of frivolous complaints. Even routine matters such as the late filing of reports can be the subject of complaints requiring the Board conduct a prima facie determination and to hold a probable cause hearing before the complaint could be dismissed. And this is true even if the matter complained about is already the subject of a Board review or has been fully resolved.

Previously the Executive Director was trusted to make the initial determination as to whether a complaint would be investigated. In clear cases, the Executive Director either accepted or rejected the complaint. In cases that were not as clear, the Executive Director brought the matter to the Board for determination. In all cases, the Executive Director's decision was presented to the Board at its next meeting and the Board had the option of reversing the decision.

The Board has long recognized that complaints are often filed for political effect. In the past, complaints about matters that were already being handled by the Board, such as the late filing of reports, were not accepted for investigation. That approach is no longer available to the Board. The new statutes ensure that even a non-meritorious complaint will have a life of two months before it can be dismissed. Staff is concerned that ensuring a longer life for every complaint will have the unintended consequence of more complaints being filed merely for the political benefit a complainant that may result from the filing.

Staff will develop possible approaches to dealing with this problem and will present them for Board consideration at the September meeting when the Board begins the process of determining what, if any, recommendations it will make to the 2015 legislature.