

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

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**August 16, 2018  
Room G-31  
Minnesota Judicial Center**  
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**MINUTES**

The meeting was called to order by Chair Flynn.

Members present: Flynn, Haugen, Leppik, Moilanen, Rosen (arrived during request to accept affidavit of contributions), Swanson

Others present: Sigurdson, Pope, staff; Hartshorn, counsel

The meeting did not strictly follow the order of business set forth in the agenda.

**MINUTES** (July 11, 2018)

After discussion, the following motion was made:

Member Swanson's motion:                    To approve the July 11, 2018, minutes as drafted.

Vote on motion:                                Motion passed (5 ayes, 1 absent).

**CHAIR'S REPORT**

**A. Meeting schedule**

The next Board meeting is scheduled for 10:30 a.m. on Wednesday, September 12, 2018.

**REQUEST TO ACCEPT AFFIDAVIT OF CONTRIBUTIONS**

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson said that one of the requirements for a candidate to qualify for public subsidy payments is to file an affidavit of contributions by the deadline for filing the pre-primary report of receipts and expenditures. Mr. Sigurdson said that in 2018, the deadline for the pre-primary report, and therefore the affidavit of contributions, was July 30, 2018. Mr. Sigurdson briefly reviewed the outreach conducted by Board staff to ensure that candidates are aware of the affidavit deadline. Mr. Sigurdson stated that despite this outreach, some candidates do not file the affidavit by the deadline and therefore are disqualified from receiving public subsidy payments. Mr. Sigurdson said that one of these candidates, Gary Porter, was asking the Board to accept his affidavit of contributions.

Candidate Gary Porter and his committee treasurer Joan Stevermer then appeared before the Board. Mr. Porter stated that he and his treasurer believed that everything had been filed. Mr. Porter said that Ms. Stevermer had called the Board and been told that the committee's report had been received. Mr. Porter argued that because his committee actually had raised the required contributions and because he and his treasurer believed that they had complied with the affidavit requirement, he was asking the Board to accept his affidavit of contributions.

Mr. Sigurdson then clarified that staff had spoken with Ms. Stevermer on the affidavit due date but had believed that the treasurer was asking only whether the committee's pre-primary report had been filed, not the affidavit of contributions.

After discussion, the following motions were made:

Member Rosen's motion: To accept the Porter affidavit of contributions.

Vote on motion: Motion failed (3 ayes, 3 nays).

Member Moilanen's motion: To accept the Porter affidavit of contributions under the circumstances of this case with the parties appearing before the Board.

Vote on motion: Motion passed (4 ayes, 2 nays).

### **EXECUTIVE SESSION**

The chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the chair had the following to report into regular session:

Findings of fact, conclusions of law, and order in the matter of the complaint of Soren Sorensen regarding the 2<sup>nd</sup> Senate District DFL, Ted Fiskevold, chair, and Lon Engberg, treasurer

Revised findings of fact, conclusions of law, and order in the matter of the Vote Jerry Loud committee

### **ADVISORY OPINION 448 – LOAN TO CANDIDATE**

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson said that this advisory opinion request considered whether a loan made by an individual to a candidate for the purpose of allowing the candidate to campaign full time would be subject to the contribution limits and reporting requirements in Chapter 10A.

After discussion, the following motion was made:

Member Rosen's motion: To lay the matter over to the next meeting.

Vote on motion: Unanimously passed.

**ADVISORY OPINION 449 – POLITICAL ADVERTISEMENTS IN NEWSLETTERS**

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson stated that this advisory opinion was requested by an association that publishes newsletters and that wants to accept newsletter advertisements only from candidates who are members of the association. Mr. Sigurdson said that the draft opinion stated that the association’s advertising policies were not regulated by Chapter 10A but that in some situations, those policies could result in contributions from the association to the member candidates or from corporate members to the advertising candidates.

After discussion, the following motion was made:

Member Swanson’s motion: To adopt Advisory Opinion 449 as drafted.

Vote on motion: Unanimously passed.

**EXECUTIVE DIRECTOR REPORT**

Mr. Sigurdson compared the number of pre-primary reports still outstanding to the number of reports that had been timely filed on July 30, 2018. Mr. Sigurdson also highlighted some aggregate contribution and expenditure information from those reports. Mr. Sigurdson said that public subsidy payments would be made to qualifying candidates at the end of the week following the Board meeting. Finally, Mr. Sigurdson announced that Andrew Olson would be filling the Board’s vacant management/legal analyst position.

**ENFORCEMENT REPORT**

**A. Consent item**

**1. Request to withdraw registration – DentaQuest Political Action Committee**

Ms. Pope told members that DentaQuest was a political action committee registered in Tennessee. Ms. Pope said that the committee had made contributions to two Minnesota party units. Because the total of the two contributions exceeded \$750, DentaQuest mistakenly believed that it was required to register as a political committee in Minnesota. Ms. Pope stated that after DentaQuest had registered a political committee in Minnesota, it became aware of Minnesota Statutes section 10A.27, subdivision 13. This statute allows groups not registered in Minnesota to make contributions of more than \$200 during a calendar year to up to three committees or party units registered in Minnesota as long as the unregistered group provides an underlying disclosure statement with the contribution. Ms. Pope told members that DentaQuest had provided the required disclosure with its contributions to the two Minnesota party units. Ms. Pope stated that because DentaQuest did not plan to make any more contributions this year to groups registered in Minnesota and because DentaQuest was not required to register in Minnesota to make the contributions that it made, DentaQuest was asking the Board to allow it to withdraw its registration.

After discussion, the following motion was made:

Member Swanson's motion: To allow DentaQuest Political Action Committee to withdraw its registration in Minnesota.

Vote on motion: Unanimously passed.

## **B. Discussion items**

### **1. Request for second residence waiver – Tim Pawlenty**

Ms. Pope told members that Tim Pawlenty had filed a candidate statement of economic interest on June 19, 2018. Ms. Pope said that with his statement, Mr. Pawlenty also had submitted a request under Minnesota Statutes section 10A.09, subdivision 9, to waive the requirement that he disclose the address of his second residence. Mr. Pawlenty stated that the waiver request was made because of security concerns. Ms. Pope said that following staff direction, Mr. Pawlenty had not included information about the second residence on his statement pending the decision on his waiver request. Ms. Pope said that Mr. Pawlenty had submitted a supplement to his waiver request that discussed his security concerns.

After discussion, the following motion was made:

Member Rosen's motion: To grant Tim Pawlenty's request to waive the requirement that he disclose the address of his second residence on his candidate statement of economic interest form.

Vote on motion: Unanimously passed.

### **2. Request for second residence waiver – Michelle Fischbach**

Ms. Pope told members that Michelle Fischbach had filed a candidate statement of economic interest on June 19, 2018. Ms. Pope said that with the statement, Lt. Gov. Fischbach also had submitted a request under Minnesota Statutes section 10A.09, subdivision 9, to waive the requirement that she disclose the address of her second residence. Lt. Gov. Fischbach stated that the waiver request was made because of security concerns and to minimize safety concerns. Ms. Pope said that following staff direction, Lt. Gov. Fischbach had not included information about the second residence on her statement pending the decision on her waiver request.

After discussion, no motion was made. There was consensus that if Lt. Gov. Fischbach decided to provide additional information regarding her waiver request, the Board would consider the matter at its next meeting.

**C. Waiver requests**

<u>Name of Candidate or Committee</u>	<u>Late Fee &amp; 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>
Mary Mellen, house candidate, affidavit only	\$75 LFF	Candidate EIS	Candidate filed for office but then became ill for a few weeks. In addition, reminder letter was delivered to next-door neighbor. Candidate filed statement as soon as she recovered and received reminder.	Member Rosen	To waive the late filing fee	Unanimously passed
Stevens County DFL	\$250 LFF	2018 pre-primary report	Treasurer was ill and then in hospital when report was due.	Member Rosen	To waive the late filing fee	Unanimously passed

After discussion, the following motion was made:

Member Swanson's motion: To grant the waiver requests of James Mellin, Mai-Anh Kapanke, and COLL PAC

Vote on motion: Motion failed (3 ayes, 3 nays)

<u>Name of Candidate or Committee</u>	<u>Late Fee &amp; 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>
James Mellin, lt. gov. candidate, affidavit only	\$65 LFF	Candidate EIS	Candidate sent email with EIS but email was stuck in his outbox due to technical issues with computer. Candidate texted copy of form to governor candidate so forms could be filed together but only governor candidate's statement was received. Candidate filed statement as soon as he learned it had not been received.	Member Swanson	To waive the late filing fee	Motion passed (5 ayes)
Mai-Anh Kapanke, Mentoring Partnership of Minnesota	\$50 LFF	6/15/2018 Lobbyist report	Lobbyist was in process of transitioning to new job when report was due. At same time, accountant for lobbyist's former employer/principal was onboarding a new accountant and the request for disbursement information fell through the cracks. During the reporting period, lobbyist had no disbursements and principal was not engaged in any large-scale lobbying.	Member Swanson	To waive the late filing fee	Motion passed (5 ayes)
Dennis Smith for State House	\$550 LFF	2017 year-end report	Candidate's treasurer left before 2017 year-end report was due. Candidate then was responsible for filing report and was overwhelmed by the amount of detail involved. Candidate states that he has new team in place to ensure reports are timely filed.	Member Rosen	To reduce the late filing fee by one-half	Motion passed (5 ayes)

COLL PAC	\$250 LFF	2018 pre-primary report	Person responsible for sending in no change report mistakenly faxed it to herself. She also did not follow her usual practice of emailing report in as well. After calling to confirm receipt and learning report had not been received, she then faxed report.	Member Rosen	To reduce the late filing fee by one-half	Motion passed (5 ayes)
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**Informational Items**

**A. Payment of a late filing fee for 2017 year-end report of receipts and expenditures**

Sherrie Pugh, \$150

**B. Payment of a late filing fee for June 15, 2018, annual report of lobbyist principal**

Kristen Anderson, \$25  
 Mark Anfinson, \$25  
 Kevin Walli, \$500  
 Stacey Mickelson, \$75  
 Christina Zeise, \$25  
 Kelly Wolfe, \$25

**C. Payment of a late filing fee and civil penalty for 2017 annual EIS**

Ilhan Omar, \$1,100

**D. Payment of a late filing fee for candidate statement EIS**

Leon Lillie, \$30

**E. Payment of a civil penalty for false certification**

Brandon Peterson, \$1,981.48

**F. Deposit to the General Fund**

Jessica Rohloff, \$250  
 Marty Judge, \$60  
 Doug Wardlow, \$40  
 Matt Dean, \$1,671.24

**G. Payment of a late filing fee for 2018 1<sup>st</sup> quarter report of receipts and expenditures**

Mining Ind. Leadership Fund, \$225

**H. Payment of a civil penalty excess special source contributions**

Warren Limmer, \$1,500

**I. Payment of a late filing fee for June 14, 2018, report of receipts and expenditures**

Leech Lake PAC, \$25  
International Union of Operating Engineers, \$100  
AGC Building Contractors, \$50  
SEIU Local 26, \$25

**RATIFY AFFIRMATIVE ACTION PLAN**

Ms. Pope presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Ms. Pope told members that every two years, the Board must review and ratify its affirmative action plan. Ms. Pope stated that the draft affirmative action plan for 2018-2020 was based on the state's model plan for agencies with 25 or fewer employees.

After discussion, the following motion was made:

Member Leppik's motion: To ratify the 2018-2020 affirmative action plan.

Vote on motion: Unanimously passed.

**LEGAL COUNSEL'S REPORT**

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn had nothing to add to the report.

**OTHER BUSINESS**

There was no other business to report.

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

Respectfully submitted,



Jeff Sigurdson  
Executive Director

Attachments:

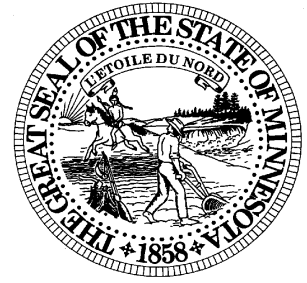
Memorandum regarding request to accept affidavit of contributions  
Memorandum regarding Advisory Opinion 448- Loan to candidates  
Draft public advisory opinion 448  
Memorandum regarding Advisory Opinion 449- Political advertisements in newsletters  
Draft public advisory opinion 449  
Memorandum regarding ratification of 2018-2020 affirmative action plan  
2018-2020 affirmative action plan  
Legal report

Findings of fact, conclusions of law, and order in the matter of the complaint of Soren Sorensen regarding the 2<sup>nd</sup> Senate District DFL, Ted Fiskevold, chair, and Lon Engberg, treasurer  
Revised findings of fact, conclusions of law, and order in the matter of the Vote Jerry Loud committee



Minnesota

*Campaign Finance and  
Public Disclosure Board*



**Date:** August 9, 2018

**To:** Board members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Request to accept affidavit of contributions after deadline

One of the requirements for a candidate to qualify for a public subsidy payment is to submit the affidavit of contributions required in Minnesota Statutes section 10A.323. The affidavit certifies that the principal campaign committee collected more than the qualifying amount of cash contributions from individuals eligible to vote in Minnesota counting only the first \$50 of the contribution. For the office of state representative, the qualifying amount is \$1,500.

As provided in Minnesota Statutes section 10A.323, the affidavit must be submitted to the Board by the due date for the pre-primary election report, for this election the deadline was July 30, 2018. Because of the importance of the deadline staff attempts to contact all candidates who have signed the public subsidy agreement but who have not filed the affidavit of contributions. Staff sent reports of candidates who met this criteria to both house caucuses, and attempted to call each candidate who had not filed by July 30<sup>th</sup>.

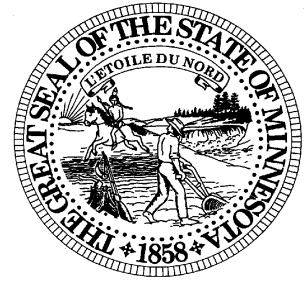
Nonetheless, some candidates do not file the affidavit. In almost all cases that is because the committee did not raise the required amount of contributions. In some cases, unfortunately, the committee did raise sufficient funds, but did not file the affidavit by the deadline. This year Gary Porter, who is a candidate in District 44B, filed the affidavit on August 1, 2018. Mr. Porter has asked to appear before the Board to explain why this occurred, and to ask that the Board accept his committee's affidavit of contributions. If the affidavit of contributions is not accepted Mr. Porter's committee will not be paid a public subsidy payment of approximately \$4,031.

I have asked Mr. Hartshorn to consider whether the Board has the authority to waive a statutory deadline under any circumstances, and to provide guidance to the Board on this issue. Additionally, the Board issued Advisory Opinion 386, which provides in part (issue four) that the Board may not extend the deadline to submit the affidavit of contributions. The facts for that advisory opinion are not similar to the facts in this situation, but I provide it as background.

Attachment  
Advisory Opinion 386

Minnesota

*Campaign Finance and  
Public Disclosure Board*



**Date:** August 9, 2018

**To:** Board members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Advisory opinion 448 – Personal loan to a candidate for the purpose of allowing the candidate to campaign full time.

This advisory opinion was requested on behalf of a candidate with a registered campaign committee who is running for office this year. The candidate does not wish to make the request public. Therefore, both a public and a nonpublic draft version of the opinion are provided for the Board's review. The request asks a series of questions all based on the candidate potentially accepting a personal loan from an individual. As provided in the request the loan is being offered so that the candidate will be able to afford to campaign full time.

The opinion as drafted provides that because the purpose of the loan is to increase the availability of the candidate to campaign, the loan is therefore being made for the purpose of influencing the election outcome. The opinion further provides that money contributed or loaned for the purpose of influencing the nomination or election of a candidate is subject to the applicable disclosure and contribution limits found in Chapter 10A.

Attachments:

Advisory opinion request

Nonpublic version of draft advisory opinion

Public version of draft advisory opinion

**State of Minnesota  
Campaign Finance & Public Disclosure Board  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603**

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE  
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)**

**ADVISORY OPINION 448**

**SUMMARY**

A principal campaign committee is the vehicle for accepting and reporting a loan made for the purpose of allowing a candidate to spend more time campaigning for the candidate's nomination and election. A loan to a principal campaign committee from an individual is subject to the applicable reporting requirements and limits found in Chapter 10A.

**Facts**

As a representative of a candidate with a registered principal campaign committee, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion on behalf of the candidate based on the following facts:

1. The candidate has filed for a state-level office and will appear on the ballot for that office this year. The candidate wishes to devote his or her full time to the campaign, but does not have the financial resources to campaign full time.
2. An individual who has no role in the candidate's campaign is willing to make a loan to the candidate so that the candidate may campaign full time. The funds for the loan will not come from a corporation or a financial institution. The individual who is willing to make the loan would use only his or her personal funds for the loan.
3. The loan would be made with a written agreement that would provide for repayment of the loan over a set number of years, and a market value interest rate would apply to the loan.
4. The loan agreement would contain the following provisions:
  - a) None of the proceeds of the loan will be used for political purposes in any way;
  - b) The proceeds of the loan will not be intermingled with the candidate's principal campaign committee funds;
  - c) The loan must be repaid from the candidate's personal funds; and
  - d) The intent of the loan is to cover personal living expenses that would ordinarily be covered by the candidate's personal income.

## Issue One

Is the loan subject to any reporting requirements under Minnesota Statutes Chapter 10A?

## Opinion One

Yes. As required by Minnesota Statutes section 10A.105, subdivision 1, the candidate has formed and registered a principal campaign committee for the office sought. All contributions and loans that provide funding for campaign expenditures are committee funds, and must be reported by the principal campaign committee. Campaign expenditures are defined in Minnesota Statutes section 10A.01, subdivision 9, as "...a purchase or payment of money...made or incurred for the purpose of influencing the nomination or election of a candidate...."

The requester states that proceeds from the loan will not be used to purchase goods or services for use by the principal campaign committee. Instead, the candidate will use the loan proceeds to replace the personal income that will be lost as a result of the candidate campaigning full time. Additionally, as stated in the facts of the opinion request, the individual who is offering to make the loan is doing so knowing that the funds will be used to allow the candidate to campaign full time.

Therefore, the purpose of the loan is to increase the time that the candidate may devote to the campaign. The expected direct result of the increase in the candidate's availability to campaign is a greater opportunity to interact with voters and gain their support for the upcoming elections. The proceeds from the loan will in effect purchase time for the candidate to influence voting at the election. With the purpose of the loan so clearly tied to the candidate's campaign for office, the Board concludes that the loan must be made to, and reported by, the principal campaign committee as required in Minnesota Statutes section 10A.20, subdivision 3 (e).

If the Board were to recognize a way for individuals to make loans to candidates for campaign purposes outside of the principal campaign committee, then the individual making the loan could avoid the contribution limits. Additionally the individual making the loan would have anonymity not available to other principal campaign committee contributors. The end result would be a circumvention of the contribution limits and disclosure requirements of Chapter 10A.

Not asked by the requester, but interrelated to the facts presented in the request, is whether committee funds may be used to either pay a salary to the candidate, or to make a loan to the candidate to pay personal living expenses. In Advisory Opinion 379, the Board specifically provided that a principal campaign committee may not pay a salary to its candidate for running for office, even though such a salary would allow the candidate to spend more time meeting with potential voters.<sup>1</sup> The Board also provided in Advisory Opinion 391 that a principal campaign committee may not pay a newly-elected candidate a salary while transitioning to serve in public office.<sup>2</sup>

Both of these advisory opinions are based on Minnesota Statutes section 211B.12, which provides, in relevant part, that "[m]oney collected for political purposes and assets of a political committee or political fund may not be converted to personal use." The Board has consistently

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<sup>1</sup> Advisory Opinion 379, issued April 12, 2006. [https://cfb.mn.gov/pdf/advisory\\_opinions/AO379.pdf](https://cfb.mn.gov/pdf/advisory_opinions/AO379.pdf)

<sup>2</sup> Advisory Opinion 391, opinion 1, issued November 28, 2006.

[https://cfb.mn.gov/pdf/advisory\\_opinions/AO391.pdf](https://cfb.mn.gov/pdf/advisory_opinions/AO391.pdf)

viewed this statute as limiting the use of committee funds to only those expenditures directly related to the campaign, such as transportation and lodging costs of the candidate while campaigning, and prohibiting the use of the funds for costs that were incurred outside of the campaign, such as mortgage payments or other personal household expenditures that would occur regardless of the individual's status as a candidate.

Similarly, Minnesota Statutes section 10A.17, subdivision 3a, prohibits using money raised for a political purpose for personal loans:

A principal campaign committee, political committee, political fund, or party unit may not lend money it has raised to anyone for purposes not related to the conduct of a campaign.

Finally, the Board notes that the analysis in this opinion does not apply to a loan made by a financial institution to a candidate. A loan made in the normal course of business by a financial institution to a candidate is not made for the purpose of influencing an election. It is made to generate profit for the financial institution. Therefore, a personal loan from a financial institution to a candidate is not reportable under Chapter 10A, and is not subject to the limitations on use found in Minnesota Statutes section 211B.12.

### **Issue Two**

Would this loan constitute a contribution from the individual who wishes to make the loan to the candidate or the candidate's principal campaign committee?

### **Opinion Two**

No, not when the loan is made. As explained in Issue One, the loan must be made to the candidate's principal campaign committee. A loan is not considered a contribution when it is made. However a loan may become a contribution under the circumstances described in Minnesota Statutes, section 10A.01, subdivision 11 (b):

(b) "Contribution" includes a loan or advance of credit to a political committee, political fund, principal campaign committee, or party unit, if the loan or advance of credit is: (1) forgiven; or (2) repaid by an individual or an association other than the political committee, political fund, principal campaign committee, or party unit to which the loan or advance of credit was made. If an advance of credit or a loan is forgiven or repaid as provided in this paragraph, it is a contribution in the year in which the loan or advance of credit was made.

Because a loan may become a contribution, a loan from an individual may not be in an amount greater than the contribution limit for the office sought, as provided in Minnesota Statutes section 10A.27, subdivision 8.

### **Issue Three**

Does this loan constitute an approved expenditure on behalf of the candidate?

### **Opinion Three**

No. An approved expenditure is a type of in-kind contribution in which goods or services are purchased by an entity or individual on behalf of the principal campaign committee. Minn. Stat. § 10A.01, subd. 4 (definition of approved expenditure). As provided in the facts of this opinion the loan will provide funds for the candidate's use.

### **Issue Four**

If the individual who is willing to make the loan has already given the maximum allowed contribution to the candidate's principal campaign committee, would the individual still be allowed to make the loan?

### **Opinion Four**

No. Outstanding loans either made or endorsed by an individual are included in the aggregation of contributions counted towards the contribution limit of the individual, as provided in Minnesota Rules, 4503.0700, subpart 1.

### **Issue Five**

Is the legality of the loan impacted if the individual making the loan is also a board member of an association that makes independent expenditures in support of the candidate's campaign?

### **Opinion Five**

No. The scenario presented in the request does not suggest that the independent expenditures were discussed with the candidate or any agent of the candidate. Therefore, the scenario does not present any opportunity for actions that would defeat the independence of the expenditures.

Additionally, Minnesota Laws 2018, chapter 119, section 24 (to be codified as Minnesota Statutes section 10A.177) provides that a donation to a candidate from an individual or entity that makes independent expenditures does not by itself compromise independent expenditures made on behalf of the candidate.

### **Issue Six**

Are the answers to any of the prior opinions changed depending on whether the candidate signed or did not the public subsidy agreement for the election cycle?

### **Opinion Six**

No. None of the opinions provided are reliant on the candidate signing the public subsidy agreement.

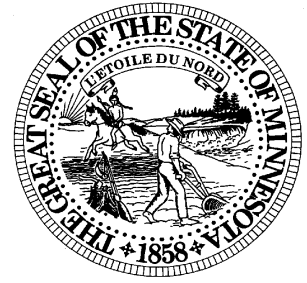
Issued August 16, 2018

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Carolyn Flynn, Chair  
Campaign Finance and Public Disclosure Board

Minnesota

*Campaign Finance and  
Public Disclosure Board*



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**Date:** August 9, 2018

**To:** Board members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Advisory opinion 449 – Political advertisements in membership newsletters

This advisory opinion was requested by an association that publishes newsletters and would like to accept paid advertisements only from candidates who are members of the association. The association does not wish to make the request public. Therefore, both a public and a nonpublic draft version of the opinion are provided for the Board's review. The request asks if the association may limit candidate campaign advertisements in the newsletters to only those candidates who are members of the association, and if the association may reject political advertisements that it finds insulting or derogatory.

The opinion as drafted provides that the association's policies for accepting advertisements in the newsletters are not regulated by Chapter 10A. The opinion further provides that providing a reduced advertising rate for advertisements from member candidates may result in a prohibited corporate contribution to the candidates, and that the source of the membership dues paid for access to advertise in the newsletters also should be evaluated to ensure no corporate contribution occurs.

Attachments:

Advisory opinion request

Nonpublic version of draft advisory opinion

Public version of draft advisory opinion

**State of Minnesota  
Campaign Finance & Public Disclosure Board  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603**

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE  
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)**

**ADVISORY OPINION 449**

**SUMMARY**

An association's advertising policies for accepting political advertisements are not governed by Chapter 10A. Associations should be aware of actions that may result in a prohibited corporate contribution to a candidate's principal campaign committee.

**Facts**

As a representative of an association that may interact with principal campaign committees, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts:

1. The association is a 501(c)(6) membership-based organization registered as a non-profit corporation in Minnesota.
2. The association produces a bi-monthly print newsletter that is only available to association members. The association also produces a weekly electronic newsletter that is similar in content to the print newsletter, but which is available to individuals who are not members of the association.
3. Members of the association may pay to advertise their products and services in either the print or the electronic version of the newsletter. Advertising is a benefit of association membership, so non-members may not purchase advertisements in either version of the newsletter.
4. Some members of the association are candidates for office at the upcoming election.

**Issue One**

Is the association required to accept campaign advertisements from non-members, or to accept campaign advertisements that the association deemed to be insulting or derogatory on a personal level?



## Opinion One

Not under Chapter 10A. An association's policies for accepting advertisements in its membership publications are not governed by the statutory provisions under the Board's jurisdiction.<sup>1</sup> Nor does Chapter 10A give candidates the right to advertise in a membership newsletter. However, the association should take steps to ensure that the acceptance of advertisements from member candidates does not result in a corporate contribution to the candidate's campaign committee.

The cost to place a campaign advertisement should be determined from a set schedule that applies to all advertisers. If the advertisement rate is lower for candidates than for other advertisers, then the difference between the candidate rate and the rate for the other advertisers represents an in-kind donation from the association to the candidate's committee. The association is a non-profit corporation. Non-profit corporations are generally prohibited from contributing to candidate committees under Minnesota Statutes section 211B.15.

The requester states that the payment of membership dues is required to have access to advertise in the newsletters. If the membership dues were paid with personal funds by an individual, then the access to advertise in the newsletters is an in-kind contribution from that individual to the campaign committee. However, if the membership dues were paid by a corporation, then using the corporate membership for the access needed to advertise in the newsletters is an in-kind contribution from the corporation to the campaign committee that could be prohibited under Minnesota Statutes section 211B.15.

For the association's reference the Board notes that Minnesota Statutes section 211B.05 requires periodicals to identify political advertisements, and also sets standards for advertising rates charged to candidates that advertise in periodicals. The Board has no jurisdiction over Minnesota Statutes section 211B.05, and makes no conclusion as to whether that statute applies to the association's newsletter.

Issued August 16, 2018

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Carolyn Flynn, Chair  
Campaign Finance and Public Disclosure Board

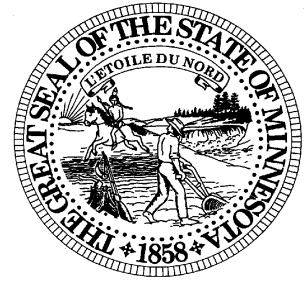
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<sup>1</sup> Minnesota Statutes section 10A.37. Nothing in this chapter may be construed to abridge the right of an association to communicate with its members.

Minnesota

*Campaign Finance and  
Public Disclosure Board*

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**Date:** August 9, 2018

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Affirmative Action Plan

Every two years, the Board must review and ratify its affirmative action plan. The current plan expired on July 31, 2018.

The attached affirmative action plan is based on the state's model plan for agencies with 25 or fewer employees. It will be effective from August 1, 2018, through July 31, 2020. As required, the plan is signed by the Board's executive director. The matter is before the Board for ratification of the plan.

Attachment: Affirmative Action Plan 2018-2020

# State of Minnesota

## Campaign Finance and Public Disclosure Board

### 2018-2020 Affirmative Action Plan

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190 Centennial Office Building  
658 Cedar Street  
St. Paul, MN 55155  
651-539-1180  
MN Relay 800-627-3529  
cf.board@state.mn.us  
cfb.mn.gov

As requested by Minnesota Statute 3.197: This report cost approximately \$400 to prepare, including staff time, printing and mailing expenses.

Upon request, this material will be made available in an alternative format such as large print, Braille or audio recording. Printed on recycled paper.

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## Organizational Profile (Brief Overview)

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The Campaign Finance and Public Disclosure Board was established by the state legislature in 1974 and is charged with the administration of Minnesota Statutes Chapter 10A, the Campaign Finance and Public Disclosure Act, as well as portions of Chapter 211B, the Fair Campaign Practices act.

The Board's four major programs are campaign finance registration and disclosure, public subsidy administration, lobbyist registration and disclosure, and economic interest disclosure by public officials. The Board has six members, appointed by the Governor on a bi-partisan basis for staggered four-year terms. The appointments must be confirmed by a three-fifths vote of the members of each house of the legislature.

## Statement of Commitment

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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, or subject to harassment, on the basis of race, sex (including pregnancy), color, creed, religion, age, national origin, sexual orientation, gender expression, gender identity, disability, marital status, familial status, status with regard to public assistance, or membership or activity in a local human rights commission.
- The prohibition of discrimination on the basis of sex precludes sexual harassment, gender-based harassment, and harassment based on pregnancy.
- 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 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.

Adopted: July 31, 2018

Revised (HR/LR Policy #1436 added): August 3, 2018

A handwritten signature in black ink, appearing to read "Jeff Sigurdson". The signature is written in a cursive, flowing style.

Jeff Sigurdson  
Executive Director

# Individuals Responsible for Directing/Implementing the Affirmative Action Plan

---

## A. Executive Director

### Responsibilities

The executive director is responsible for establishing an Affirmative Action Program, including goals, timetables and compliance with all federal and state laws and regulations. The executive director, through the Commissioner of Minnesota Management & Budget (MMB), will report annually to the Governor and the Legislature the Board's progress in meeting its affirmative action goals and objectives.

In addition, because the Board has only nine employees, the executive director also is responsible for some functions that would be the responsibility of senior management in a larger agency. These responsibilities include working with the affirmative action officer to implement all aspects of the Board's Affirmative Action Plan and the Board's commitment to affirmative action and equal opportunity.

### Duties

The duties of the executive director shall include, but not be limited to, the following:

- Appoint the affirmative action officer or designee and include accountability for the administration of the Board's Affirmative Action Plan in his or her position description.
- Take action, if needed, on complaints of discrimination and discriminatory harassment.
- Issue a statement affirming the Board's commitment to affirmative action and equal employment opportunity, and ensure that such a statement is disseminated to all employees.
- Work with the affirmative action officer to communicate the equal opportunity employment policy and the affirmative action program and plan to all employees.
- Work with the affirmative action officer to identify any problem areas and eliminate barriers that inhibit equal employment opportunity within the agency.
- Make such decisions and changes in policies, procedures or physical accommodations as may be needed to implement effective affirmative action in the agency.
- Actively promote equal employment opportunity and incorporate diversity and inclusion principles in annual business plans, strategic plans, and Board's mission.
- Report annually to the Governor and the Legislature through the Commissioner of MMB the Board's progress in affirmative action.
- Notify all contractors and sub-contractors with the agency of their affirmative action responsibilities.

- Actively promote the enforcement of equal employment opportunity in affirmative and non-affirmative hiring decisions reviewed in the hiring process.
- Require that all Board supervisors include responsibility statements for supporting affirmative action, equal opportunity, diversity, and/or cultural responsiveness in their position descriptions and annual objectives.
- Demonstrate and practice a discrimination and harassment free work environment for all employees.

## **Accountability**

The executive director is accountable directly to the Board and indirectly to the Governor and the Commissioner of MMB for affirmative action matters.

### **Name of individual responsible**

**Name:** Jeff Sigurdson

**Email:** jeff.sigurdson@state.mn.us

**Title:** Executive Director

**Phone:** 651-539-1189

## **B. Affirmative Action Officer**

### **Responsibilities**

The affirmative action officer is directly responsible for developing, coordinating, implementing and monitoring the Board’s affirmative action program. Because the Board has only nine employees, the affirmative action officer also is responsible for duties that would be performed by an affirmative action officer designee at a larger agency.

In addition, the Department of Administration’s Small Agency Resource Team (SmART) performs some human resources functions for the Board under an interagency agreement. Consequently, the affirmative action officer performs some of the duties listed below in conjunction with SmART according to the terms of the interagency agreement.

### **Duties**

The duties of the affirmative action officer shall include, but not be limited to, the following:

- Develop and administer the Board’s Affirmative Action Plan.
- Assist in the development of agency-wide affirmative action hiring goals.
- Monitor agency compliance and work with SmART to fulfill all affirmative action reporting requirements.
- Disseminate the affirmative action policy and all relevant affirmative action information to employees in the agency.



- Inform the executive director on progress in affirmative action and equal opportunity and report potential concerns.
- Act as the affirmative action liaison between the Board, MMB, and the Governor’s Office.
- Determine the need for affirmative action training within the agency and initiate the development of such training programs with the assistance of internal and external resources, as necessary.
- Review and recommend changes in policies, procedures, programs and physical accommodations to facilitate affirmative action and equal opportunity.
- Support and participate in the recruitment of protected class persons for employment, promotion and training opportunities.
- Act as the affirmative action liaison for the Board to SmART in human resources matters delegated to SmART under the terms of the interagency agreement.
- Ensure supervisors and managers are making affirmative efforts to recruit and retain protected group candidates and employees.
- Oversee the administration of the Americans with Disabilities Act Title I and Title II.
- Receive requests for ADA accommodations and work with appropriate supervisors, unions, etc. to approve or deny the request, or provide alternative accommodations.
- Maintain records of requests for reasonable accommodations.

### **Accountability**

The affirmative action officer is accountable to the executive director for program impacts, ongoing program activities and direction, and other matters pertaining to Affirmative Action and Equal Opportunity.

### **Name of individual responsible**

**1. Name:** Jodi Pope

**Email:** jodi.pope@state.mn.ust

**Title:** Legal/Management Analyst 4

**Phone:** 651-539-1183

## **C. Human Resources Designee - SmART; Board Executive Director and Assistant Executive Director**

### **Responsibilities**

As stated above, the Board’s human resource function is handled in conjunction with the Department of Administration’s Small Agency Resource Team (SmART). The SmART Human Resources Office is responsible for ensuring equitable and uniform administration of all personnel policies and for assisting

supervisors in human resources management activities. The Board's affirmative action officer is responsible for ensuring timely responses to all Americans with Disabilities Act (ADA) requests for accommodations to remove barriers to equal employment opportunity with the agency. The Board's executive director and assistant executive director perform the human resource functions not handled by SmART.

Staff within the SmART Human Resources Office who work on affirmative action and diversity issues are accountable to the SmART Human Resources Director or designee. The SmART Human Resources Office is accountable to the Board according to the terms of the Board's interagency agreement. The Board's assistant executive director is accountable to the executive director. The executive director is accountable to the Board.

## **Duties**

The duties of the SmART Human Resources team shall include, but not be limited to, the following:

- Maintain effective working relationship with Board management and affirmative action officer.
- Provide guidance to Board management to ensure personnel decision-making processes adhere to equal opportunity and affirmative action principles.
- Provide guidance to Board management in the development and utilization of selection criteria to ensure they are objective, uniform, and job related.
- Provide guidance to Board management in the recruitment and retention of protected class persons and notify executive director of existing disparities.
- Provide guidance to Board affirmative action officer in responding to requests for ADA accommodations.
- Provide guidance to Board management and affirmative action officer in implementing and following an Affirmative Action Pre-hire Review process.
- Complete the Monitoring the Hiring Process Quarterly Reports for the Board.

The duties of the executive director and the assistant executive director in the human resources area shall include, but not be limited to, the following:

- Work with SmART Human Resources and the Board affirmative action officer to ensure personnel decision-making processes adhere to equal opportunity and affirmative action principals.
- Work with SmART Human Resources in the recruitment and retention of protected class persons and respond to reports of existing disparities.
- Work with SmART Human Resources and the Board affirmative action officer to ensure that an Affirmative Action Pre-hire Review process is implemented and followed.

- Work with the Board affirmative action officer to ensure that the reasonable accommodation process is implemented and followed for all employees and applicants in need of reasonable accommodation.
- Include responsibility statements for affirmative action/equal employment opportunity in relevant position descriptions and annual performance objectives.

## Accountability

SmART human resources staff are accountable to the SmART Human Resource Directors or designees. SmART Human Resources is accountable to the Board according to the terms of the Board’s agreement with that agency. The Board’s assistant executive director is accountable to the executive director. The executive director is accountable to the Board.

## Name of individual(s) responsible

**1. Name:** Jodie Segelstrom

**Email:** jodie.segelstrom@state.mn.us

**Title:** Human Resources Specialist 2

**Phone:** 651-259-3768

**2. Name:** Jeff Sigurdson

**3. Name:** Megan Engelhardt

**Title:** Executive director

**Title:** Assistant executive director

**Email:** jeff.sigurdson@state.mn.us

**Email:** megan.engelhardt@state.mn.us

**Phone:** 651-539-1189

**Phone:** 651-539-1182

## D. Americans with Disabilities Act Title I Coordinator

### Responsibilities

The Americans with Disabilities Act (ADA) Title I Coordinator is responsible for the oversight of the Board’s compliance with the ADA Title I – Employment, in accordance with the ADA - as amended and the Minnesota Human Rights Act.

### Duties:

The duties of the ADA Title I Coordinator shall include, but are not limited to, the following:

- Provide guidance, coordination, and direction to Board management with regard to the ADA in the development and implementation of Board policy, procedures, and practices to ensure Board employment practices and programs are accessible and nondiscriminatory.
- Provide training, technical guidance, and consultation to Board management and staff on compliance and best practices with regard to hiring and retention of individuals with disabilities as well as the provision of reasonable accommodations to employees and job applicants.

- Track and facilitate requests for reasonable accommodations for job applicants and employees, as well as members of the public accessing agency services, and, in conjunction with SMART, report reasonable accommodations annually to MMB.
- Research case law rules and regulation and update management on evolving ADA issues.
- Ensure compliance with ADA reporting according to state and federal requirements.
- Submit reasonable accommodation reimbursement under the guidelines of the statewide accommodation fund.
- Provide reasonable accommodations to qualified individuals (as defined by ADA) with known physical or mental disabilities, to enable them to compete in the selection process or to perform the essential functions of the job and/or enjoy equal benefits and privileges. The ADA coordinator, in consultation with the employee and supervisor, and other individuals who may need to be involved must:
  - Discuss the purpose and essential functions of the particular job and complete a step-by-step job analysis;
  - Determine the precise job-related limitations;
  - Identify the potential accommodations and assess the effectiveness each would have in allowing the employee to perform the essential functions of the job; and
  - After discussion and review, select and implement the accommodations that are appropriate for both the employee and the employer using the Reasonable Accommodation Agreement.

**Accountability:**

The ADA Title 1 Coordinator is accountable to the executive director.

**Name of individual(s) responsible**

**1. Name:** Jodi Pope

**Email:** jodi.pope@state.mn.us

**Title:** Legal/Management Analyst 4

**Phone:** 651-539-1183

**E. Americans with Disabilities Act Title II Coordinator**

**Responsibilities**

The Americans with Disabilities Act (ADA) Title II Coordinator is responsible for the oversight of the Board’s compliance with the ADA Title II – Public Services, in accordance with the ADA - as amended and the Minnesota Human Rights Act.

## **Duties:**

The duties of the ADA Title II Coordinator shall include, but not limited to, the following:

- Provide guidance, coordination, and direction to Board management with regard to the ADA in the development and implementation of Board policy, procedures, and practices to ensure Board services and programs are accessible and nondiscriminatory for the public.
- Provide training, technical guidance, and consultation to Board management and staff on compliance and best practices with regards and obligations to members of the public with disabilities as well as the provision of reasonable modifications to visitors.
- Track and facilitate requests for reasonable modifications for members of the public accessing Board services, and report reasonable modifications annually to MMB.
- Research case law rules and regulation and update management on evolving ADA issues.
- In conjunction with SmART, ensure compliance with ADA reporting according to state and federal requirements.
- Design and deliver specific ADA training for Board employees assisting ADA modifications for the public.
- Provide reasonable modifications to members of the public (as defined by ADA) with known physical or mental disabilities, to ensure equal access and privileges to programming and services. The ADA Title II coordinator in consultation with the member of the public in need of a modification shall:
  - Discuss the purpose and essential functions of a particular reasonable modification;
  - Identify the potential modifications and asses the effectiveness each request.
  - After discussion and review, select and implement the modifications that are appropriate for both the member of the public and the Board. This review shall be documented and reported in the State ADA Annual Report.

## **Accountability:**

The ADA Title II Coordinator is accountable to the executive director.

### **Name of individual(s) responsible**

**1. Name:** Jodi Pope

**Email:** jodi.pope@state.mn.us

**Title:** Legal/Management Analyst 4

**Phone:** 651-539-1183

## **F. Senior Managers – Assistant Executive Director**

### **Responsibilities**

The assistant executive director is responsible, along with the executive director, for implementing all aspects of the Board Affirmative Action Plan and the Board’s commitment to affirmative action and equal opportunity.

### **Duties**

The duties of the assistant executive director shall include, but not be limited to, the following:

- Alert the executive director and the affirmative action officer to problem areas and barriers that inhibit equal employment opportunity within the agency.
- Assist with the communication of the equal opportunity employment policy and the affirmative action program and plan to all employees.
- Assist the affirmative action officer and SmART Human Resources in conducting periodic audits of hiring and promotion patterns to remove impediments to attaining affirmative action goals and objectives.
- Demonstrate and practice a discrimination and harassment free work environment for all employees.

### **Accountability**

The assistant executive director is accountable directly to the executive director.

## **G. All Employees**

### **Responsibilities**

All employees are responsible for conducting themselves in accordance with the state of Minnesota’s policy of equal employment opportunity by refraining from any actions that would subject any employee to negative treatment on the basis of that individual’s race, creed, color, sex (including pregnancy), national origin, age, marital status, familial status, disability, sexual orientation, gender expression, gender identity, reliance on public assistance, membership or activity in a local human rights commission, religion, political opinions, or affiliations. Employees who believe they have been subjected to such discrimination or harassment are encouraged to use the agency’s complaint procedure.

### **Duties:**

The duties of all employees shall include, but are not limited, to the following:

- Exhibit an attitude of respect, courtesy and cooperation towards fellow employees and the public.
- Refrain from any actions that would adversely affect a coworker on the basis of their race, sex, color, creed, religion, age, national origin, disability, marital status, familial status, status with regard to public assistance, sexual orientation, gender identity, gender expression, or membership or activity in a local human rights commission.

### **Accountability:**

Employees are accountable to their designated supervisor and indirectly to the executive director. Employees are responsible for maintaining an environment free from harassment and discrimination. All employees are responsible for conducting themselves in accordance with the Affirmative Action Plan.

## **Communication of the Affirmative Action Plan**

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The following information describes the methods that the agency takes to communicate the Affirmative Action Plan to employees and the general public:

### **Internal Methods of Communication**

- An email detailing the location of the Affirmative Action Plan and the responsibility to read, understand, support, and implement equal opportunity and affirmative action will be sent from the executive director or alternatively, the affirmative action officer, to all nine Board staff on an annual basis.
- The Board's Affirmative Action Plan is available to all employees on the Board's website at <https://cfb.mn.gov/publications/legal/laws-rules-policy/policies-and-guidance/> or in print copy to anyone who requests it. As requested, the Board will make the plan available in alternative formats.
- A physical copy of the Board's Affirmative Action Plan will be available to employees at the following address: 190 Centennial Office Building, 658 Cedar St, St. Paul, MN 55155
- Nondiscrimination and equal opportunity statements and posters are prominently displayed and available in areas frequented and accessible to employees.

### **External Methods of Communication**

- The Board's Affirmative Action Plan is available on the Board's public website at <https://cfb.mn.gov/publications/legal/laws-rules-policy/policies-and-guidance/> or in print copy to anyone who requests it. As requested, the Board will make the plan available in alternative formats.

- The Board’s website homepage and job postings will include the statement “an equal opportunity employer” and “women, minorities, and individuals with disabilities are encouraged to apply.”
- Nondiscrimination and equal opportunity statements and posters are prominently displayed and available in areas frequented by and accessible to members of the public. Examples of posters displayed include: Equal Employment Opportunity is the law, Employee Rights under the Fair Labor Standards Act, and the Americans with Disabilities Act Notice to the Public.
- A physical copy of the Board’s Affirmative Action Plan will be available to contractors, vendors, and members of the public at the following address: 190 Centennial Office Building, 658 Cedar St, St. Paul, MN 55155



# Appendix

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## Statewide Harassment and Discrimination Prohibited Policy, HR/LR Policy # 1436

### OVERVIEW

#### Objective

To create a work environment free from harassment and discrimination based on protected class.

#### Policy Statement

Any form of harassment or discrimination based on protected class is strictly prohibited. Individuals who believe they have been subject to harassment/discrimination based on protected class or retaliation as described in this policy, are encouraged to file a report with an appropriate authority, as set forth in Section II of this policy.

Any form of retaliation directed against an individual who opposes or reports protected class harassment/discrimination, or who participates in any investigation concerning protected class harassment/discrimination, is strictly prohibited and will not be tolerated.

Violations of this policy by State employees will be subject to discipline, up to and including discharge. Violations of this policy by third parties will be subject to appropriate action.

*For issues related to sexual harassment, please refer to HR/LR Policy #1329: Sexual Harassment Prohibited. For issues not related to sexual harassment or harassment or discrimination based on protected class, please see HR/LR Policy #1432 Respectful Workplace.*

#### Scope

This policy applies to all employees of, and third parties who have business interactions with, executive branch agencies and the classified employees in the Office of the Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement Association, and Teachers' Retirement Association.

#### Definitions and Terms

*Complainant:* An individual who reports protected class harassment, discrimination, or retaliation.

*Third party:* Individuals who are not State employees, but who have business interactions with State employees, including, but not limited to:

- Applicants for State employment
- Vendors
- Contractors
- Volunteers

- Customers
- Business partners
- Unpaid interns
- Other individuals with whom State employees interact in the course of employees' work for the State, such as advocates, lobbyists, and representatives of individuals or entities with business with any branch of Minnesota state government

*Protected class harassment or harassment based on protected class:* Unwelcome conduct or communication that is based on actual or perceived membership in a protected class, including stereotypes of protected classes, that has a negative effect or is likely to have a negative effect on the complainant and/or on the workplace or public service environment.

*Protected class:* Protected classes under this policy are as follows:

- Race
- Color
- Creed
- Religion
- National origin
- Sex\* (includes pregnancy and pregnancy-related conditions)
- Marital status
- Familial status
- Receipt of public assistance
- Membership or activity in a local human rights commission
- Disability
- Age
- Sexual orientation
- Gender identity
- Gender expression
- For employees, genetic information

\*See HR/LR Policy #1329 Sexual Harassment Prohibited for specific information on harassment based on unwelcome conduct or communication of a sexual nature.

*Age:* The prohibition against harassment and discrimination based on age prohibits such conduct based on a person's age if the person is over the age of 18.

*Marital status:* Whether a person is single, married, remarried, divorced, separated, or a surviving spouse, and includes protection against harassment or discrimination on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.

*Familial status:* The condition of one or more minors living with their parent(s) or legal guardian, or the designee of the parent(s) or guardian with the written permission of the parent(s) or guardian. This also protects those who are pregnant or those who are in the process of securing legal custody of a minor from being harassed or discriminated against on that basis.

*Disability:* A physical, sensory, or mental impairment which materially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.

*Genetic information:* Includes information about an individual's or their family members' genetic tests, 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 their family member, and the genetic information of a fetus carried by an individual or a pregnant family member, and the genetic information of any embryo legally held by the individual or their family member using an assisted reproductive technology.

*Public service environment:* A location where public service is being provided.

*Membership or activity in a local human rights commission:* Participation in an agency of a city, county, or group of counties that has the purpose of dealing with discrimination on the basis of race, color, creed, religion, national origin, sex, age, disability, marital status, status with regard to public assistance, sexual orientation, or familial status, as defined by Minn. Stat. § 363A.03, subd. 23.

## **GENERAL STANDARDS AND EXPECTATIONS**

### **Prohibition of Protected Class Harassment and Discrimination**

Harassment of or discrimination against any employee or third party based on protected class in the workplace or public service environment, or which affects the workplace or public service environment, is strictly prohibited. Harassment of or discrimination against an individual because of their relationship or association with members of a protected class is also strictly prohibited.

Protected class harassment/discrimination may take different forms including verbal, nonverbal, or physical conduct or communication. Conduct based on protected class may violate this policy even if it is not intended to be harassing. Protected class harassment/discrimination under this policy includes, but is not limited to, the following behavior when it is based on actual or perceived membership in a protected class, including stereotypes of protected classes:

- Offensive jokes, slurs, derogatory remarks, epithets, name-calling, ridicule or mockery, insults or put-downs
- Display or use of offensive objects, drawings, pictures, or gestures
- Physical assaults or threats
- Inappropriate touching of body, clothing, or personal property
- Following, stalking, intimidation
- Malicious interference with work performance
- Implicit or explicit preferential treatment or promises of preferential treatment for submitting to the conduct or communication
- Implicit or explicit negative treatment or threats of negative treatment for refusing to submit to the conduct or communication
- Discriminatory conduct based on an individual's actual or perceived protected class that segregates, separates, limits or restricts the individual from employment opportunities, including, but not limited to, hiring, promotion, compensation, disciplinary action, assignment of job duties, benefits or privileges of employment

## **Employee and Third Party Responsibilities and Complaint Procedure**

Harassment or discrimination based on protected class will not be tolerated. All employees and third parties are expected to comply with this policy.

Employees and third parties are strongly encouraged to report all incidents of protected class harassment or discrimination, whether the individual is the recipient of the behavior, an observer, or is otherwise aware of the behavior. Individuals are encouraged to report incidents as soon as possible after the incident occurs. Individuals may report to any of the following:

1. Any of the agency's managers or supervisors
2. The agency's affirmative action officer
3. The agency's human resources office
4. Agency management, up to and including the agency head

If the report concerns an agency head, the complainant may contact Minnesota Management and Budget, Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion.

To ensure the prompt and thorough investigation of a report, the complainant may be asked to provide information in writing, which may include, but is not limited to:

1. The name, department, and position of the person(s) allegedly causing the harassment/discrimination
2. A description of the incident(s), including the date(s), location(s), and the identity of any witnesses
3. The name(s) of other individuals who may have been subject to similar harassment/discrimination
4. What, if any, steps have been taken to stop the harassment/discrimination
5. Any other information the complainant believes to be relevant

Individuals are encouraged to use the agency's internal complaint procedure, but may also choose to file a complaint externally with the Equal Employment Opportunity Commission (EEOC), the Minnesota Department of Human Rights (MDHR), or other legal channels.

## **Manager/Supervisory Responsibility**

Managers and supervisors must:

1. Model appropriate behavior
2. Treat all reports of protected class harassment/discrimination seriously
3. Appropriately respond to a report or problem when they receive a report of protected class harassment/discrimination, or when they are otherwise aware a problem exists
4. Immediately report all allegations or incidents of protected class harassment/discrimination to human resources or the agency Affirmative Action Officer
5. Comply with their agency's complaint and investigation procedures and/or the agency's Affirmative Action Plan

## **Human Resources Responsibilities**

Agency human resources must:

1. Model appropriate behavior
2. Distribute the Harassment and Discrimination Prohibited Policy to all employees, through a method whereby receipt can be verified
3. Treat all reports of protected class harassment/discrimination seriously
4. Comply with the agency's complaint and investigation procedures and/or the agency's Affirmative Action Plan

## **Affirmative Action Officer or Designees Responsibilities**

Agency Affirmative Action Officer/designee must:

1. Model appropriate behavior
2. Treat all reports of protected class harassment/discrimination seriously
3. Comply with the agency's complaint and investigation procedures and/or the agency's Affirmative Action Plan
4. Keep the agency apprised of changes and developments in the law and policy

## **Investigation and Discipline**

State agencies will take seriously all reports of protected class harassment/discrimination or retaliation, and will take prompt and appropriate action. When conducting an investigation, supervisors, human resources, and Affirmative Action Officers must follow their agency's investigation procedures.

State agencies will take prompt and appropriate corrective action when there is a violation of this policy.

Employees who are found to have engaged in conduct in violation of this policy will be subject to disciplinary action, up to and including discharge.

Third parties who are found to have engaged in conduct in violation of this policy will be subject to appropriate action. Appropriate action for policy violations by third parties will depend on the facts and circumstances, including the relationship between the third party and the agency. Agencies may contact MMB Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion for assistance in determining appropriate action for third parties. MMB may refer agencies to the appropriate resources, which may include, for example, the Department of Administration with respect to policy violations by vendors or contractors.

Employees who knowingly file a false report of protected class harassment/discrimination or retaliation will be subject to disciplinary action, up to and including discharge.

## **Non-Retaliation**

Retaliation against any person who opposes protected class harassment/discrimination, who reports protected class harassment/discrimination, or who participates in an investigation of such reports, is strictly prohibited. Retaliation also includes conduct or communication designed to prevent a person from opposing or reporting protected class harassment/discrimination or participating in an investigation. Retaliation will not be tolerated. Any employee who is found to have engaged in retaliation in violation of this policy will be subject to discipline, up to and including discharge. Third parties who are found to have engaged in retaliation in violation of this policy will be subject to appropriate action.

## **Complaint Procedure for Processing Complaints Under the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy:**

The Campaign Finance and Public Disclosure Board has established the following complaint procedure to be used by all individuals alleging harassment, discrimination, or retaliation in violation of the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy. Coercion, retaliation, or intimidation against anyone filing a complaint or serving as a witness under this procedure is prohibited.

### **Who May File:**

Any individual who believes that they have been subject to harassment, discrimination, or retaliation in violation of the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy is encouraged to use this internal complaint procedure.

If the individual chooses, a complaint can be filed externally with the Minnesota Department of Human Rights (MDHR), the U.S. Equal Employment Opportunity Commission (EEOC), or through other legal channels. The MDHR, EEOC and other legal channels have time limits for filing complaints; individuals may contact the MDHR, EEOC, or a private attorney for more information.

Retaliation against any person who has filed a complaint either internally through this complaint procedure or through an outside enforcement agency or other legal channels is prohibited.

Individuals who knowingly file a false complaint will be subject to disciplinary or corrective action.

The following are the procedures for filing a complaint:

1. The individual may, but is not required to, complete the “Harassment and Discrimination Prohibited/ Sexual Harassment Prohibited Policies Complaint Form” provided by the affirmative action officer or designee. Individuals are encouraged to file a complaint within a reasonable period of time after the individual becomes aware that a situation may involve conduct in violation of the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy. The affirmative action officer or a designee will, if requested, provide assistance in filling out the form.
2. The affirmative action officer, or a designee, determines if the complainant is alleging conduct in violation of the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy; or if the complaint instead is of a general personnel concern or a general concern of respect in the workplace.
  - If it is determined that the complaint is not related to conduct that would violate the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy, but rather involves general personnel concerns or general concerns of respect in the workplace, the affirmative action officer or designee will inform the complainant, in writing, within ten (10) business days.

- If it is determined that the complaint is related to conduct that would violate the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy, the affirmative action officer or designee will determine whether corrective action may be taken without an investigation. If it is determined that an investigation is necessary, the affirmative action officer or designee shall investigate the complaint. The affirmative action officer may contract with an outside investigator to conduct the investigation.
3. The affirmative action officer or designee shall create a written investigation report of every investigation conducted. If the investigation shows sufficient evidence to substantiate the complaint, appropriate corrective action will be taken.
  4. Within (60) days after the complaint is filed, the affirmative action officer or designee shall provide a written answer to the complainant, unless reasonable cause for delay exists. The complainant will be notified if the written answer is not expected to be issued within the sixty (60) day period. The written answer to the complainant must comply with the data privacy restrictions of the Minnesota Government Data Practices Act.
  5. Disposition of the complaint will be filed with the Commissioner of Minnesota Management and Budget within thirty (30) days after the final determination.
  6. The status of the complaint may be shared with the complainant(s) and respondent(s). All data related to the complaint are subject to the provisions of the Minnesota Government Data Practices Act.
  7. The affirmative action officer or designee shall maintain records of all complaints, investigation reports, and any other data or information the affirmative action officer or designee deems pertinent for seven (7) years after the complaint is closed.
  8. In extenuating circumstances, the employee or applicant may contact the State Affirmative Action Officer in the Office of Equal Opportunity at Minnesota Management and Budget for information regarding the filing of a complaint (for example, if the complaint is against the agency head or the agency affirmative action officer).



# Campaign Finance and Public Disclosure Board

## Harassment and Discrimination Prohibited/Sexual Harassment Prohibited Policies Complaint Form

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

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

Respondent (Person against whom you are filing the complaint)		
Name	Job Title	
Work Address	City, State, Zip Code	Telephone
Agency	Division	Manager/Supervisor's Name

The Complaint		
<b>Basis of Complaint (Place an "X" in the box for all that apply):</b>		
<input type="checkbox"/> Race	<input type="checkbox"/> Disability	<input type="checkbox"/> Gender Expression
<input type="checkbox"/> Sex	<input type="checkbox"/> Marital Status	<input type="checkbox"/> Religion
<input type="checkbox"/> Familial Status	<input type="checkbox"/> Gender Identity	<input type="checkbox"/> Genetic Information
<input type="checkbox"/> Age	<input type="checkbox"/> National Origin	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Color	<input type="checkbox"/> Creed	<input type="checkbox"/> Membership or Activity in a Local Human Rights Commission
<input type="checkbox"/> Sexual Harassment	<input type="checkbox"/> Sexual Orientation	<input type="checkbox"/> Reliance on Public Assistance

Date most recent act of discrimination/harassment in violation of policy took place: \_\_\_\_\_

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

Describe, in as much detail as possible, the conduct that you believe violates the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy. List dates, locations, and names and titles of people involved. Explain why you believe the conduct was based on the item(s) checked in the "Basis of Complaint" section above. Use additional paper if needed and attach to this form. Attach any documents you believe may be relevant.

Information on witnesses who you believe can support your complaint		
Witness name	Witness work address	Witness work telephone

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

This complaint is being filed based on my honest believe that I have been subjected to conduct in violation of the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy. 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

**NON-RETALIATION:** Retaliation against any person who reports conduct under the Harassment and Discrimination Prohibited Policy or the Sexual Harassment Prohibited Policy is strictly prohibited and will not be tolerated. If you believe that you have been subjected to retaliation, you are encouraged to report such behavior.

This material is available in alternative formats for individuals with disabilities by contacting Jodi Pope at 651-539-1183; 800-657-3889; by TTY by calling 800-627-3529, or [jodi.pope@state.mn.us](mailto:jodi.pope@state.mn.us)

**Additional information**

# **Statewide Sexual Harassment Prohibited Policy**

## **Statewide HR/LR Policy #1329: Sexual Harassment Prohibited**

### **Objective**

To create a work environment free from sexual harassment of any kind.

### **Policy Statement**

Sexual harassment in any form is strictly prohibited. Individuals who believe they have been subject to sexual harassment are encouraged to file a complaint with an appropriate authority. Any form of retaliation directed against an individual who complains about sexual harassment or who participates in any investigation concerning sexual harassment is strictly prohibited and will not be tolerated. Violations of this policy by State employees will be subject to discipline, up to and including discharge. Violations of this policy by third parties will be subject to appropriate action.

### **Scope**

This policy applies to all employees of, and third parties who have business interactions with, executive branch agencies and the classified employees in the Office of the Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement Association, and Teachers' Retirement Association.

### **Definitions and Key Terms**

#### **Complainant**

An individual who complains about sexual harassment or retaliation.

#### **Public service environment**

A location that is not the workplace where public service is being provided.

#### **Sexual harassment**

Unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal, written, or physical conduct or communication of a sexual nature.

#### **Third party**

Individuals who are not State employees but who have business interactions with State employees, including, but not limited to:

- Applicants for State employment
- Vendors
- Contractors
- Volunteers

- Customers
- Business Partners

## **Exclusions**

N/A

## **Statutory References**

42 U.S.C. § 2000e, et al.  
 M.S. Ch. 363A  
 M.S. Ch. 43A  
 Minn. Rule 3905.0500

## **GENERAL STANDARDS AND EXPECTATIONS**

### **I. Prohibition of Sexual Harassment**

Sexual harassment of any employee or third party in the workplace or public service environment, or which affects the workplace or public service environment, is strictly prohibited.

Sexual harassment under this policy is any conduct or communication of a sexual nature which is unwelcome. The victim, as well as the harasser, can be of any gender. The victim does not have to be of the opposite sex as the harasser. Sexual harassment includes, but is not limited to:

- Unwelcome sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, degrading sexual remarks, threats;
- Unwelcome sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures;
- Unwelcome physical contact, such as rape, sexual assault, molestation, or attempts to commit these assaults; unwelcome touching, pinching, or brushing of or by the body;
- Preferential treatment or promises of preferential treatment for submitting to sexual conduct, including soliciting or attempting to solicit an individual to submit to sexual activity for compensation or reward;
- Negative treatment or threats of negative treatment for refusing to submit to sexual conduct;
- Subjecting, or threatening to subject, an individual to unwelcome sexual attention or conduct.

### **II. Employee and Third Party Responsibilities and Complaint Procedure**

Sexual harassment will not be tolerated. All employees and third parties are expected to comply with this policy.

Employees and third parties are encouraged to report all incidents of sexual harassment. Individuals are encouraged to report incidents of sexual harassment as soon as possible after the incident occurs. Individuals may make a complaint of sexual harassment with:

- An agency supervisor;

- The agency's affirmative action officer;
- An agency's human resource office;
- Agency management, up to and including the commissioner.

If the complaint concerns an agency head, the complainant may contact Minnesota Management & Budget, Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion.

To ensure the prompt and thorough investigation of a complaint of sexual harassment, the complainant may be asked to provide information in writing, which may include, but is not limited to:

- The name, department, and position of the person(s) allegedly causing the harassment;
- A description of the incident(s), including the date(s), location(s), and the presence of any witnesses;
- The name(s) of other individuals who may have been subject to similar harassment;
- What, if any, steps have been taken to stop the harassment;
- Any other information the complainant believes to be relevant.

Individuals are encouraged to use the agency's internal complaint procedure, but may also choose to file a complaint externally with the Equal Employment Opportunity Commission (EEOC) and/or the Minnesota Department of Human Rights (MDHR) or other legal channels.

### **III. Supervisor Responsibility**

Supervisors are responsible for the following:

- Modeling appropriate behavior;
- Treating all complaints of sexual harassment seriously, regardless of the individuals or behaviors involved;
- When a complaint of sexual harassment has been made to the supervisor, or when the supervisor is otherwise aware that a problem exists, the supervisor must appropriately respond to the complaint or problem;
- Immediately report all allegations or incidents of sexual harassment to human resources or the agency Affirmative Action Officer so that prompt and appropriate action can be taken;
- Complying with their agency's complaint and investigation procedures and/or their Affirmative Action Plan to ensure prompt and appropriate action in response to complaints of sexual harassment.

Supervisors who knowingly participate in, allow, or tolerate sexual harassment or retaliation are in violation of this policy and are subject to discipline, up to and including discharge.

### **IV. Human Resources Responsibilities**

Agency human resources offices are responsible for the following:

- Modeling appropriate behavior;
- Distributing the sexual harassment policy to all employees, through a method whereby receipt can be verified;

- Treating all complaints of sexual harassment seriously, regardless of the individual(s) or behaviors involved;
- Complying with the agency’s complaint and investigation procedures and/or their Affirmative Action Plan to ensure prompt and appropriate action in response to complaints of sexual harassment.

## **V. Affirmative Action Officer or Designee Responsibilities**

Agency Affirmative Action Officer/designee is responsible for the following:

- Modeling appropriate behavior;
- Treating all complaints of sexual harassment seriously, regardless of the individual(s) or behaviors involved;
- Complying with the agency’s complaint and investigation procedures to ensure the prompt and appropriate action in response to complaints of sexual harassment;
- Keeping the agency apprised of changes and developments in the law.

## **VI. Investigation and Discipline**

All complaints of sexual harassment will be taken seriously, and prompt and appropriate action taken. When conducting an investigation, supervisors, human resources, and Affirmative Action Officers must follow their agency’s investigation procedures. For a sample investigation procedure, please review the documents available on the [MMB Equal Opportunity, Diversity, and Inclusion website](#), including:

- Agency AAP Planning Guide
- For agencies with more than 25 employees
- For agencies with 25 or fewer employees

Timely and appropriate corrective action will be taken when there is a violation of this policy. Employees who are found to have engaged in sexual harassment in violation of this policy will be subject to disciplinary action, up to and including discharge.

Third parties who are found to have engaged in sexual harassment in violation of this policy will be subject to appropriate action. Appropriate action for policy violations by third parties will depend on the facts and circumstances, including the relationship between the third party and the agency. Agencies may contact MMB Enterprise Human Resources, Office of Equal Opportunity, Diversity, and Inclusion for assistance in determining appropriate action for third parties. MMB may refer agencies to the appropriate resources, which may include, for example, the Department of Administration with respect to policy violations by vendors or contractors.

Employees who knowingly file a false complaint of sexual harassment will be subject to disciplinary action, up to and including discharge.

## **VII. Non-Retaliation**

Retaliation against any person who reports sexual harassment or participates in an investigation of such reports is strictly prohibited. Retaliation will not be tolerated. Any employee who is found to have engaged in

retaliation in violation of this policy will be subject to discipline, up to and including discharge. Third parties who are found to have engaged in retaliation in violation of this policy will be subject to appropriate action.

## **RESPONSIBILITIES**

### **Agencies are responsible for:**

- Adopting this policy.
- Disseminating this policy to agency employees through a method whereby receipt can be verified.
- Posting this policy in a manner that can be accessed by third parties.
- Including this policy in their Affirmative Action Plan.
- Implementing this policy, including developing:
  - An educational program;
  - A process for reporting complaints; and
  - A procedure under which complaints will be addressed promptly.
  - Enforcing this policy.

### **MMB is responsible for:**

- Ensuring that state agencies carry out their responsibilities under this policy and updating this policy as necessary.

## **FORMS AND SUPPLEMENTS**

See acknowledgement form, below, which can be used to verify receipt by agency employees.

### **Acknowledgement**

I acknowledge that I have received and read the policy, Sexual Harassment Prohibited, and accompanying complaint procedure. I understand that sexual harassment and retaliation are strictly prohibited. I understand that if I engage in conduct in violation of the policy toward any State employee, applicant for employment, vendor, contractor, volunteer, customer, or business partner, I will be subject to disciplinary action, up to and including discharge.

I understand that if I believe that I have been subjected to sexually harassing or retaliatory conduct as defined by this policy by any State employee, applicant for employment, vendor, contractor, volunteer, customer or business partner, I am encouraged to report that behavior. I understand that I can make a report to agency managers/supervisors, agency human resources, or agency management, up to and including the commissioner. I understand that if my complaint concerns an agency head, I may contact Minnesota Management & Budget.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Employee Name: \_\_\_\_\_



# Statewide ADA Reasonable Accommodation Policy

## Statewide HR/LR Policy #1433: ADA Reasonable Accommodation Policy

### OBJECTIVE

The goals of this policy are:

- To ensure compliance with all applicable state and federal laws;
- To establish a written and readily accessible procedure regarding reasonable accommodation, including providing notice of this policy on all job announcements;
- To provide guidance and resources about reasonable accommodations;
- To provide a respectful interactive process to explore reasonable accommodations; and
- To provide a timely and thorough review process for requests for reasonable accommodation.

### Policy Statement

State agencies must comply with all state and federal laws that prohibit discrimination against qualified individuals with disabilities in all employment practices. All state agencies must provide reasonable accommodations to qualified applicants and employees with disabilities unless to do so would cause an undue hardship or pose a direct threat. Agencies must provide reasonable accommodation when:

- A qualified applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
- A qualified employee with a disability needs an accommodation to perform the essential functions of the employee's job; and
- A qualified employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., trainings, office sponsored events).

### Scope

This policy applies to all employees of the Executive Branch and classified employees in the Office of Legislative Auditor, Minnesota State Retirement System, Public Employee Retirement System, and Teachers' Retirement System.

### Definitions

**Applicant-** A person who expresses interest in employment and satisfies the minimum requirements for application established by the job posting and job description.

**Americans with Disabilities Act (ADA) Coordinator-** Each agency is required to appoint an ADA coordinator or designee, depending on agency size, to direct and coordinate agency compliance with Title I of the ADA.

**Direct Threat-** A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

The determination that an individual poses a direct threat shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job.

**Essential Functions-** Duties so fundamental that the individual cannot do the job without being able to perform them. A function can be essential if:

- The job exists specifically to perform the function(s); or
- There are a limited number of other employees who could perform the function(s); or
- The function(s) is/are specialized and the individual is hired based on the employee's expertise.

**Interactive Process-** A discussion between the employer and the individual with a disability to determine an effective reasonable accommodation for the individual with a disability. To be interactive, both sides must communicate and exchange information.

**Individual with a Disability-** An individual who:

- Has a physical, sensory, or mental impairment that substantially limits one or more major life activities; or
- Has a record or history of such impairment; or
- Is regarded as having such impairment.

**Qualified Individual with a Disability-** An individual who:

- Satisfies the requisite skill, experience, education, and other job-related requirements of the job that the individual holds or desires; and
- Can perform the essential functions of the position with or without reasonable accommodation.

**Major Life Activities-** May include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

**Medical Documentation-** Information from the requestor's treating provider which is sufficient to enable the employer to determine whether an individual has a disability and whether and what type of reasonable accommodation is needed when the disability or the need for accommodation is not obvious. Medical documentation can be requested using the standardized [Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider](#).

**Reasonable Accommodation-** An adjustment or alteration that enables a qualified individual with a disability to apply for a job, perform job duties, or enjoy the benefits and privileges of employment. Reasonable accommodations may include:

- Modifications or adjustments to a job application process to permit a qualified individual with a disability to be considered for a job; or
- Modifications or adjustments to enable a qualified individual with a disability to perform the essential functions of the job; or

- Modifications or adjustments that enable qualified employees with disabilities to enjoy equal benefits and privileges of employment.
- Modifications or adjustments may include, but are not limited to:
  - Providing materials in alternative formats like large print or Braille;
  - Providing assistive technology, including information technology and communications equipment, or specially designed furniture;
  - Modifying work schedules or supervisory methods;
  - Granting breaks or providing leave;
  - Altering how or when job duties are performed;
  - Removing and/or substituting a marginal function;
  - Moving to a different office space;
  - Providing telework;
  - Making changes in workplace policies;
  - Providing a reader or other staff assistant to enable employees to perform their job functions, where a reasonable accommodation cannot be provided by current staff;
  - Removing an architectural barrier, including reconfiguring work spaces;
  - Providing accessible parking;
  - Providing a sign language interpreter; or
  - Providing a reassignment to a vacant position.

**Reassignment-** Reassignment to a vacant position for which an employee is qualified is a “last resort” form of a reasonable accommodation. This type of accommodation must be provided to an employee, who, because of a disability, can no longer perform the essential functions of the position, with or without reasonable accommodation, unless the employer can show that it will be an undue hardship.

**Support Person-** Any person an individual with a disability identifies to help during the reasonable accommodation process in terms of filling out paperwork, attending meetings during the interactive process to take notes or ask clarifying questions, or to provide emotional support.

**Undue Hardship-** A specific reasonable accommodation would require significant difficulty or expense. Undue hardship is always determined on a case-by-case basis considering factors that include the nature and cost of the accommodation requested and the impact of the accommodation on the operations of the agency. A state agency is not required to provide accommodations that would impose an undue hardship on the operation of the agency.

## Exclusions

N/A

## Statutory References

- [Rehabilitation Act of 1973, Title 29 USC 701](#)

- [Americans with Disabilities Act \(1990\)](#)
- [29 C.F.R. 1630, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act](#)

## GENERAL STANDARDS AND EXPECTATIONS

### Individuals who may request a reasonable accommodation include:

- Any qualified applicant with a disability who needs assistance with the job application procedure or the interview or selection process; or
- Any qualified agency employee with a disability who needs a reasonable accommodation to perform the essential functions of the position; or
- A third party, such as a family member, friend, health professional or other representative, on behalf of a qualified applicant or employee with a disability, when the applicant or employee is unable to make the request for reasonable accommodation. When possible, the agency must contact the applicant or employee to confirm that the accommodation is wanted. The applicant or employee has the discretion to accept or reject the proposed accommodation.

The agency must abide by the [Minnesota Government Data Practices Act, Chapter 13](#), in obtaining or sharing information related to accommodation requests.

### How to request a reasonable accommodation

An agency applicant or employee may make a reasonable accommodation request to any or all of the following:

- Immediate supervisor or manager in the employee's chain of command;
- Agency Affirmative Action Officer/Designee;
- Agency ADA Coordinator;
- Agency Human Resources Office;
- Any agency official with whom the applicant has contact during the application, interview and/or selection process.

### Timing of the request

An applicant or employee may request a reasonable accommodation at any time, even if the individual has not previously disclosed the existence of a disability or the need for an accommodation. A request is any communication in which an individual asks or states that he or she needs the agency to provide or change something because of a medical condition.

The reasonable accommodation process begins as soon as possible after the request for accommodation is made.

## Form of the request

The applicant or employee is responsible for requesting a reasonable accommodation or providing sufficient notice to the agency that an accommodation is needed.

An initial request for accommodation may be made in any manner (e.g., writing, electronically, in person or orally).

The individual requesting an accommodation does not have to use any special words and does not have to mention the ADA or use the phrase "reasonable accommodation" or "disability."

Oral requests must be documented in writing to ensure efficient processing of requests.

Agency request forms can be found at: "[Employee/Applicant Request for Reasonable Accommodation Form](#)".

When a supervisor or manager observes or receives information indicating that an employee is experiencing difficulty performing the job due to a medical condition or disability, further inquiry may be required. Supervisors or managers should consult with the agency ADA Coordinator for advice on how to proceed.

When an employee needs the same reasonable accommodation on a repeated basis (e.g., the assistance of a sign language interpreter), a written request for accommodation is required the first time only. However, the employee requesting an accommodation must give appropriate advance notice each subsequent time the accommodation is needed. If the accommodation is needed on a regular basis (e.g., a weekly staff meeting), the agency must make appropriate arrangements without requiring a request in advance of each occasion.

## The interactive process entails

Communication is a priority and encouraged throughout the entire reasonable accommodation process. The interactive process is a collaborative process between the employee and/or applicant and the agency to explore and identify specific reasonable accommodation(s). (For information on the Interactive Process see the U.S. Department of Labor, Job Accommodation Network at <http://askjan.org/topics/interactive.htm>). This process is required when:

- The need for a reasonable accommodation is not obvious;
- The specific limitation, problem or barrier is unclear;
- An effective reasonable accommodation is not obvious;
- The parties are considering different forms of reasonable accommodation;
- The medical condition changes or fluctuates; or,
- There are questions about the reasonableness of the requested accommodation.

The interactive process should begin as soon as possible after a request for reasonable accommodation is made or the need for accommodation becomes known.

The process should ensure a full exchange of relevant information and communication between the individual and the agency. An individual may request that the agency ADA Coordinator, a union representative, or support person be present.

The agency ADA Coordinator shall be consulted when:

- Issues, conflicts or questions arise in the interactive process; and
- Prior to denying a request for accommodation.

### **Agency responsibilities for processing the request**

As the first step in processing a request for reasonable accommodation, the person who receives the request must promptly forward the request to the appropriate decision maker. At the same time, the recipient will notify the requestor who the decision maker is.

#### **Commissioner**

The commissioner of the agency or agency head has the ultimate responsibility to ensure compliance with the ADA and this policy and appoint an ADA Coordinator.

#### **ADA Coordinator**

The agency ADA Coordinator is the agency's decision maker for reasonable accommodation requests for all types of requests outside of the supervisors' and managers' authority. The agency ADA Coordinator will work with the supervisor and manager, and where necessary, with agency Human Resources, to implement the approved reasonable accommodation.

#### **Supervisors and Managers**

Agencies have the authority to designate the level of management approval needed for reasonable accommodation requests for low-cost purchases. For example:

Requests for standard office equipment that is needed as a reasonable accommodation and adaptive items costing less than \$100. [Agencies can adjust the dollar amount based on their needs]; and

Requests for a change in a condition of employment such as modified duties, or a change in schedule, or the location and size of an employee's workspace. [Agencies can choose to delegate specific requests to supervisors or managers or require these types of requests to work through the agency ADA Coordinator].

### **Analysis for processing requests**

Before approving or denying a request for accommodation, the agency decision maker with assistance from the agency ADA Coordinator will:

1. Determine if the requestor is a qualified individual with a disability;
2. Determine if the accommodation is needed to:
  - Enable a qualified applicant with a disability to be considered for the position the individual desires;
  - Enable a qualified employee with a disability to perform the essential functions of the position;or

- Enable a qualified employee with a disability to enjoy equal benefits or privileges of employment as similarly situated employees without disabilities;
3. Determine whether the requested accommodation is reasonable;
  4. Determine whether there is a reasonable accommodation that will be effective for the requestor and the agency; and
  5. Determine whether the reasonable accommodation will impose an undue hardship on the agency's operations.

An employee's accommodation preference is always seriously considered, but the agency is not obligated to provide the requestor's accommodation of choice, so long as it offers an effective accommodation, or determines that accommodation would cause an undue hardship.

### **Obtaining medical documentation in connection with a request for reasonable accommodation**

In some cases, the disability and need for accommodation will be reasonably evident or already known, for example, where an employee is blind. In these cases, the agency will not seek further medical documentation. If a requestor's disability and/or need for reasonable accommodation are not obvious or already known, the agency ADA Coordinator may require medical information showing that the requestor has a covered disability that requires accommodation. The agency ADA Coordinator may request medical information in certain other circumstances. For example when:

- The information submitted by the requestor is insufficient to document the disability or the need for the accommodation;
- A question exists as to whether an individual is able to perform the essential functions of the position, with or without reasonable accommodation; or
- A question exists as to whether the employee will pose a direct threat to himself/herself or others.

Where medical documentation is necessary, the agency ADA Coordinator must make the request and use the [Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider](#). The agency ADA Coordinator must also obtain the requestor's completed and signed [Authorization for Release of Medical Information](#) before sending the Letter to, or otherwise communicating with, the medical provider. The employee may choose not to sign the Authorization. However, if the employee chooses not to sign the Authorization, it is the employee's responsibility to ensure that the agency receives the requested medical information.

Only medical documentation specifically related to the employee's request for accommodation and ability to perform the essential functions of the position will be requested. When medical documentation or information is appropriately requested, an employee must provide it in a timely manner, or the agency may deny the reasonable accommodation request. Agencies must not request medical records; medical records are not appropriate documentation and cannot be accepted. **Supervisors and managers *must not* request medical information or documentation from an applicant or employee seeking an accommodation.** Such a request will be made by the agency ADA Coordinator, if appropriate.

## **Confidentiality requirements**

### **Medical Information**

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. All medical information obtained in connection with such requests must be collected and maintained on separate forms and in separate physical or electronic files from non-medical personnel files and records. Electronic copies of medical information obtained in connection with the reasonable accommodation process must be stored so that access is limited to only the agency ADA Coordinator. Physical copies of such medical information must be stored in a locked cabinet or office when not in use or unattended. Generally, medical documentation obtained in connection with the reasonable accommodation process should only be reviewed by the agency ADA Coordinator.

The agency ADA Coordinator may disclose medical information obtained in connection with the reasonable accommodation process to the following:

- Supervisors, managers or agency HR staff who have a need to know may be told about the necessary work restrictions and about the accommodations necessary to perform the employee's duties. However, information about the employee's medical condition should only be disclosed if strictly necessary, such as for safety reasons;
- First aid and safety personnel may be informed, when appropriate, if the employee may require emergency treatment or assistance in an emergency evacuation;
- To consult with the State ADA Coordinator or Employment Law Counsel at MMB, or the Attorney General's Office about accommodation requests, denial of accommodation requests or purchasing of specific assistive technology or other resources; or
- Government officials assigned to investigate agency compliance with the ADA.

Whenever medical information is appropriately disclosed as described above, the recipients of the information must comply with all confidentiality requirements.

### **Accommodation Information**

The fact that an individual is receiving an accommodation because of a disability is confidential and may only be shared with those individuals who have a need to know for purposes of implementing the accommodation, such as the requestor's supervisor and the agency ADA Coordinator.

### **General Information**

General summary information regarding an employee's or applicant's status as an individual with a disability may be collected by agency equal opportunity officials to maintain records and evaluate and report on the agency's performance in hiring, retention, and processing reasonable accommodation requests.

### **Approval of requests for reasonable accommodation**

As soon as the decision maker determines that a reasonable accommodation will be provided, the agency ADA Coordinator will process the request and provide the reasonable accommodation in as short of a timeframe as possible. The time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information. If an approved accommodation cannot be provided within a reasonable time, the decision maker will inform the requestor



of the status of the request before the end of 30 days. Where feasible, if there is a delay in providing the request, temporary measures will be taken to provide assistance.

Once approved, the reasonable accommodation should be documented for record keeping purposes and the records maintained by the agency ADA Coordinator.

### **Funding for reasonable accommodations**

The agency must specify how the agency will pay for reasonable accommodations.

### **Procedures for reassignment as a reasonable accommodation**

Reassignment to a vacant position is an accommodation that must be considered if there are no effective reasonable accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other reasonable accommodations would impose an undue hardship.

The agency ADA Coordinator will work with agency Human Resources staff and the requestor to identify appropriate vacant positions within the agency for which the employee may be qualified and can perform the essential functions of the vacant position, with or without reasonable accommodation. Vacant positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors will be considered first. If there are none, the agency will consider vacant lower level positions for which the individual is qualified. The EEOC recommends that the agency consider positions that are currently vacant or will be coming open within at least the next 60 days.

### **Denial of requests for reasonable accommodation**

The agency ADA Coordinator must be contacted for assistance and guidance prior to denying any request for reasonable accommodation. The agency may deny a request for reasonable accommodation where:

- The individual is not a qualified individual with a disability;
- The reasonable accommodation results in undue hardship or the individual poses a direct threat to the individual or others. Undue hardship and direct threat are determined on a case-by-case basis with guidance from the agency ADA Coordinator; or
- Where no reasonable accommodation, including reassignment to a vacant position, will enable the employee to perform all the essential functions of the job.

The explanation for denial must be provided to the requestor in writing. The explanation should be written in plain language and clearly state the specific reasons for denial. Where the decision maker has denied a specific requested accommodation, but has offered a different accommodation in its place, the decision letter should explain both the reasons for denying the accommodation requested and the reasons that the accommodation being offered will be effective.

### **Consideration of undue hardship**

An interactive process must occur prior to the agency making a determination of undue hardship. Determination of undue hardship is made on a case-by-case basis and only after consultation with the agency's ADA Coordinator. In determining whether granting a reasonable accommodation will cause an undue hardship, the agency considers factors such as the nature and cost of the accommodation in

relationship to the size and resources of the agency and the impact the accommodation will have on the operations of the agency.

Agencies may deny reasonable accommodations based upon an undue hardship. Prior to denying reasonable accommodation requests due to lack of financial resources, the agency will consult with the State ADA Coordinator at MMB.

### **Determining direct threat**

The determination that an individual poses a “direct threat,” (i.e., a significant risk of substantial harm to the health or safety of the individual or others) which cannot be eliminated or reduced by a reasonable accommodation, must be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job with or without reasonable accommodation. A determination that an individual poses a direct threat cannot be based on fears, misconceptions, or stereotypes about the individual's disability. Instead, the agency must make a reasonable medical judgment, relying on the most current medical knowledge and the best available objective evidence.

In determining whether an individual poses a direct threat, the factors to be considered include:

- Duration of the risk;
- Nature and severity of the potential harm;
- Likelihood that the potential harm will occur; and
- Imminence of the potential harm.

### **Appeals process in the event of denial**

In addition to providing the requestor with the reasons for denial of a request for reasonable accommodation, agencies must designate a process for review when an applicant or employee chooses to appeal the denial of a reasonable accommodation request. This process:

- Must include review by an agency official;
- May include review by the State ADA Coordinator; and/or
- Must inform the requestor of the statutory right to file a charge with the Equal Employment Opportunity Commission or the Minnesota Department of Human Rights.

### **Information tracking and records retention**

Agencies must track reasonable accommodations requested and report once a year by September 1st to MMB the number and types of accommodations requested, approved, denied and other relevant information.

Agencies must retain reasonable accommodation documentation according to the agency's document retention schedule, but in all cases for at least one year from the date the record is made or the personnel action involved is taken, whichever occurs later. 29 C.F.R. § 1602.14.

## RESPONSIBILITIES

### Agencies are responsible for the request:

- Adoption and implementation of this policy and development of reasonable accommodation procedures consistent with the guidance in this document.

### MMB is responsible for:

- Provide advice and assistance to state agencies and maintain this policy.

### Please review the following forms:

- [Employee/Applicant Request for ADA Reasonable Accommodation](#)
- [Authorization of Release of Medical Information for ADA Reasonable Accommodations](#)
- [Letter Requesting Documentation for Determining ADA Eligibility from a Medical Provider](#)

## REFERENCES

- [U.S. Equal Employment Opportunity Commission](#), *Enforcement Guidance*
- Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995).
- Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996).
- The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997).
- Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (October 17, 2002), (clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship).
- Disability-Related Inquiries and Medical Examinations of Employees (explains when it is permissible for employers to make disability-related inquiries or require medical examinations of employees).
- Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 4055:7371.

The [Genetic Information Nondiscrimination Act \(GINA\) of 2008](#) and [M.S. 181.974](#) prohibit employers from using genetic information when making decisions regarding employment.

[Minnesota Human Rights Act \(MHRA\)](#) prohibits employers from treating people differently in employment because of their race, color, creed, religion, national origin, sex, marital status, familial status, disability, public assistance, age, sexual orientation, or local human rights commission activity. The MHRA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship or where the individual poses a direct threat to the health or safety of the individual or others. The MHRA prohibits requesting or requiring information about an individual's disability prior to a conditional offer of employment.

The [Family and Medical Leave Act](#) is a federal law requiring covered employers to provide eligible employees twelve weeks of job-protected, unpaid leave for qualified medical and family reasons.

[Executive Order 14-14, Providing for Increased Participation of Individuals with Disabilities in State Employment](#), directs agencies to make efforts to hire more individuals with disabilities and report on progress.

## **CONTACTS**

Equal Opportunity Office at Minnesota Management and Budget via [ADA.MMB@state.mn.us](mailto:ADA.MMB@state.mn.us)

## Request for Reasonable Accommodation Form

### State of Minnesota – Campaign Finance and Public Disclosure Board Employee/Applicant Request for Americans with Disabilities Act (“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.

<b>Employee/Applicant Name:</b>	<b>Job Title:</b>
<b>Work Location:</b>	<b>Phone Number:</b>

**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.

What specific accommodation are you requesting? \_\_\_\_\_

If you are not sure what accommodation is needed, do you have any suggestions about what options we can explore?  
YES    NO

If yes, please explain.

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

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

**Reasonable Accommodation Request Form, Page 2**

What, if any, employment benefits are you having difficulty accessing?

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

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 form 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:** \_\_\_\_\_

[Employee/Applicant Request for ADA Reasonable Accommodation Form](#)

## Evacuation Procedure for Individuals with Disabilities or Otherwise in Need of Assistance

The Board 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 October 13, 2017.

Each employee is provided with a copy of the emergency evacuation procedures upon employment. A copy of the plan also is available to employees at [Centennial Office Building Emergency Plan August 2017.docx](#). The emergency plan is reviewed with staff, annually, at a staff meeting. Employees are informed that they also have a responsibility to develop their own personal emergency evacuation plan. Employees are informed that if assistance might be needed during an evacuation, they should contact the agency contact below to discuss the type of assistance they may need and to create a plan for ensuring that they will obtain any needed assistance.

Under the building evacuation plan, employees who are mobility or sensory impaired are assigned an individual to assist them in an evacuation. The floor wardens for the building are notified of the number of employees in the agency who will need assistance with evacuation and the type of assistance needed.

Under the building evacuation plan, Capitol Security is responsible for issuing evacuation orders and initially communicating those orders to individuals in the building. Employees with hearing disabilities are notified of evacuation orders by their supervisors/managers or by the individuals chosen to assist them.

**Name:** Jodi Pope

**Title:** Legal/Management Analyst 4

**Email:** jodi.pope@state.mn.us

**Phone:** 651-539-1183

### Evacuation Options:

Individuals with disabilities have four basic evacuation options:

- **Horizontal evacuation:** Using building exit to the orange level of the parking ramp and then exit parking ramp on ground level;
- **Stairway evacuation:** Using steps to reach ground level exits from building;
- **Shelter in place:** Unless danger is imminent, remain in a room with an exterior window, a telephone, and a solid or fire resistant door. If the individual requiring special evacuation assistance remains in place, they should dial 911 immediately and report their location to

emergency services, who will in turn relay that information to on-site responders. The shelter in place approach may be more appropriate for sprinkler protected buildings where an area of refuge is not nearby or available. It may be more appropriate for an individual who is alone when the alarm sounds; and/or

- **Area of rescue assistance:** Identified areas that can be used as a means of egress for individuals with disabilities. These areas, located on floors above or below the building's exits, can be used by individuals with disabilities until rescue can be facilitated by emergency responders.

### **Evacuation Procedures for Individuals with Mobility, Hearing, or Visual Disabilities:**

Individuals with disabilities should follow the following procedures:

- **Mobility disabilities (individuals who use wheelchairs or other personal mobility devices ("PMDs")):** Individuals using wheelchairs should be accompanied to an area of rescue assistance when the alarm sounds. The safety and security staff will respond to each of the areas of rescue assistance every time a building evacuation is initiated to identify the individuals in these areas and notify to emergency responders how many individuals need assistance to safely evacuate.
- **Mobility disabilities (individuals who do not use wheelchairs):** Individuals with mobility disabilities, who are able to walk independently, may be able to negotiate stairs in an emergency with minor assistance. If danger is imminent, the individual should wait until the heavy traffic has cleared before attempting the stairs. If there is no immediate danger (detectable smoke, fire, or unusual odor), the individual with a disability may choose to wait at the area of rescue assistance until emergency responders arrive to assist them.
- **Hearing disabilities:** The agency's building is equipped with fire alarm horns/strobes that sound the alarm and flash strobe lights. The strobe lights are for individuals who are deaf and/or hard of hearing. Individuals with hearing disabilities may not notice or hear emergency alarms and will need to be alerted of emergency situations.
- **Visual disabilities:** The agency's building is equipped with fire alarm horn/strobes that sound the alarm and flash strobe lights. The horn will alert individuals who are blind or have visual disabilities of the need to evacuate. Most individuals with visual disabilities will be familiar with their immediate surroundings and frequently traveled routes. Since the emergency evacuation route is likely different from the common traveled route, individuals with visual disabilities may need assistance in evacuating. The assistant should offer assistance, and if accepted, guide the individual with a visual disability through the evacuation route.



## **Severe Weather Evacuation Options:**

The Board's offices are on the first floor of the building. Individuals in need of assistance during an evacuation have two evacuation options under the building evacuation plan:

- **Horizontal evacuation:** Individuals may move to an interior area of the floor to a designated safe room; and/or
- **Stairway evacuation:** Individuals may move to the basement tunnel level using the stairwell.

## **Other Relevant Information**

There is no other relevant information.

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**  
**August, 2018**

**ACTIVE FILES**

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Chilah Brown Michele Berger	Brown (Chilah) for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures  Unpaid late filing fee on 10/31/16 Pre- General Election Report	\$1,000 LF \$1,000 CP  \$50 LF	3/6/18				
Roxana Bruins	Roxana Bruins for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17	8/17/18		
Brenden Ellingboe	Ellingboe (Brenden) for House	Unfiled 2015 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	11/29/16	5/26/17			Hold by Board
Katy Humphrey, Kelli Latuska	Duluth DFL	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	3/6/18				
Christopher John Meyer	Meyer for Minnesota	2016 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			Placed on hold by Board



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

**FINDINGS, CONCLUSIONS, AND  
ORDER**

IN THE MATTER OF THE COMPLAINT OF SOREN SORENSEN REGARDING THE 2<sup>ND</sup> SENATE DISTRICT DFL; TED FISKEVOLD, CHAIR; AND LON ENGBERG, TREASURER

**Allegations of the complaint**

On May 3, 2018, the Campaign Finance and Public Disclosure Board received a complaint submitted by Soren Sorensen regarding the 2<sup>nd</sup> Senate District DFL; Ted Fiskevold, chair of the 2<sup>nd</sup> Senate District DFL; and Lon Engberg, treasurer of the 2<sup>nd</sup> Senate District DFL. The complaint alleged the following violations:

1. the 2<sup>nd</sup> Senate District DFL sent postcards to the endorsing convention delegates and alternates that did not include the required disclaimer in violation of Minnesota Statutes section 211B.04;
2. the 2<sup>nd</sup> Senate District DFL made an inappropriate charitable contribution of \$1,000 to the Red Lake Political Committee in 2016 in violation of Minnesota Statutes section 211B.12; and
3. the 2<sup>nd</sup> Senate District DFL's failure to follow the DFL's rules for local party units meant that its endorsements and expenditures were false claims of support in violation of Minnesota Statutes section 211B.02.

On May 15, 2018, the Board chair determined that the complaint did state prima facie violations of the disclaimer and charitable contribution statutes but did not state a prima facie violation of Minnesota Statutes section 211B.02 because that statute is not under the Board's jurisdiction.

In response to the prima facie determination, the party unit states that the post cards contained the statement "Paid for by the SD2 DFL" which, at the time of mailing, the party unit believed was a valid disclaimer. The 2<sup>nd</sup> Senate District DFL data secretary, chair, and treasurer subsequently attended a 2018 compliance training class conducted by Board staff. The officers state that they now understand the disclaimer requirements, including the need to use the words "prepared by" and to include the party unit's mailing address.

In response to the allegation that the party unit violated Minnesota Statutes section 211B.12, the 2<sup>nd</sup> Senate District DFL acknowledges that the party unit did donate \$1,000 to the Red Lake Political Education Committee in 2016. The 2<sup>nd</sup> Senate District DFL states that the treasurer knew that the Red Lake Political Education Committee was not registered with the Board and chose to record the contribution as a charitable contribution. The treasurer did not know that there is a \$100 annual limit on contributions to charities nor that the recipient needs to be organized under section 501(c)(3) of the Internal Revenue Code. Again, the 2<sup>nd</sup> Senate District DFL data secretary, chair, and treasurer all attended a 2018 compliance training class and state that they now understand the limit on party unit charitable contributions.

On July 11, 2018, the Board made a determination that probable cause existed to believe that the 2<sup>nd</sup> Senate DFL violated the disclaimer requirement in Minnesota Statutes section 211B.04, and that the

charitable contribution was over the allowed amount in Minnesota Statutes section 211B.12 and ordered an investigation. Respondents made a statement to the Board before the Board issued its decision.

### **The investigation**

In its responses, the 2<sup>nd</sup> Senate District DFL admits that it caused the postcards to be sent to about 100 delegates without the full required disclaimer. The 2<sup>nd</sup> Senate District DFL also admits that it made the \$1,000 payment to the Red Lake Political Education Committee in 2016. After the probable cause determination, the chair of the 2<sup>nd</sup> Senate District DFL contacted the Red Lake Political Education Committee and explained that the \$1,000 donation was not allowed under Minnesota Statutes section 211B.012. The chair states that the Red Lake Political Education Committee has agreed to repay the \$1,000 to the 2<sup>nd</sup> Senate District DFL.

### **Analysis**

Minnesota Statutes section 211B.04 requires a political party units to include a disclaimer with the committee's name and address on any campaign material that it causes to be prepared or disseminated. Campaign material is any material whose purpose is to influence voting at an election. Minn. Stat. § 211B.01, subd. 2. The Board may impose a civil penalty of up to \$3,000 for a violation of the disclaimer requirement. Minn. Stat. § 10A.34, subd. 4. The 2<sup>nd</sup> Senate DFL mailed about 100 postcards to delegates of the 2018 2<sup>nd</sup> Senate DFL endorsing convention that included the time, date, and place for the event. These postcards therefore were mailed for the purpose of influencing voting at an election. Although the postcards had the statement, "Paid for by the SD2 DFL," they did not include the party unit's address. Consequently, the postcards did not contain the disclaimer required by Minnesota Statutes section 211B.04. The Board notes, however, that here, the small number of postcards involved were not sent to the general public and they contained a disclaimer that partially complied with the requirements of Minnesota Statute section 211B.04.

Minnesota Statutes section 211B.12 states that the "[u]se of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement . . . [however] [t]he following are permitted expenditures . . . charitable contributions of not more than \$100 to any charity organized under section 501(c)(3) of the Internal Revenue Code annually. The 2<sup>nd</sup> Senate District DFL made a \$1,000 contribution to Red Lake Political Education Committee in 2016. Red Lake Political Education Committee is not organized under section 501(c)(3) of the Internal Revenue Code. Consequently, the donation to the Red Lake Political Education Committee was not permitted under Minnesota Statutes section 211B.12. Here, the 2<sup>nd</sup> Senate District DFL chair states that the Red Lake Political Education Committee has agreed to repay the \$1,000 to the party unit.

### **Findings of fact:**

1. The 2<sup>nd</sup> Senate District DFL caused about 100 postcards to be prepared and disseminated without a complete disclaimer.
2. The purpose of the postcards was to influence the voting at an election by informing delegates of the time, place, and location of the 2018 2<sup>nd</sup> Senate District DFL endorsing convention. The postcards were not sent to members of the general public, rather they were sent only to the convention delegates.

3. In 2016, the 2<sup>nd</sup> Senate District DFL made a \$1,000 contribution to the Red Lake Political Education Committee. The Red Lake Political Education Committee is not registered under section 501(c)(3) of the Internal Revenue Code.
4. The 2<sup>nd</sup> Senate District DFL has worked with the Red Lake Political Education Committee to resolve the issue, and the Red Lake Political Education Committee has agreed to refund the \$1,000.
5. The chair, treasurer, and data secretary of the 2<sup>nd</sup> Senate District DFL attended compliance training in June 2018 and now understand the requirements of Minnesota Statutes sections 211B.04 and 211B.12.

**Based on the foregoing findings of fact, the Board makes the following:**

**Conclusions of law**

1. The 2<sup>nd</sup> Senate District DFL violated Minnesota Statutes section 211B.04 because the postcards that the party unit caused to be prepared and disseminated to delegates of the endorsing convention were campaign material that did not contain the full required disclaimer.
2. The \$1,000 payment made by the 2<sup>nd</sup> Senate District DFL to the Red Lake Political Education Committee violated Minnesota Statutes section 211B.12.

**Based on the foregoing findings of fact and conclusions of law, the Board issues the following:**

**Order**

1. No civil penalty is imposed against the party unit for the disclaimer violation because the postcards included a partial disclaimer and they were sent only to a very small number of people who were not members of the general public. In addition, the party unit officers have attended compliance training and now understand the disclaimer requirements.
2. The 2<sup>nd</sup> Senate District DFL is ordered to provide proof to the Board within 60 days of the date of this order that the Red Lake Political Education Committee has refunded the \$1,000 donation to the party unit.
3. If 2<sup>nd</sup> Senate District DFL does not comply with the provisions of this order, the Board's executive director may bring the matter back before the Board for enforcement.
4. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5.

/s/ Carolyn Flynn  
Carolyn Flynn, Chair  
Campaign Finance and Public Disclosure Board

Date: August 16, 2018

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

**REVISED FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

In the Matter of Vote Jerry Loud (Registration No. 18017);

Minnesota Statutes section 10A.28, subdivision 3, provides that the Minnesota Campaign Finance and Public Disclosure Board must attempt to resolve a violation of the contribution limits “by informal methods of conference and conciliation and . . . enter into a conciliation agreement with the person involved.” If after a reasonable time, the Board is unable to resolve the matter by conciliation agreement, the Board must make findings in the matter.

At its March 7, 2018, meeting, the Board agreed to offer a conciliation agreement to candidate Jerry Loud and his principal campaign committee, Vote Jerry Loud. The Board offered the agreement to resolve the committee’s violation of the party unit contribution limit during the 2015-2016 election segment.

Board staff had discovered during the routine reconciliation audit of the 2016 year-end reports that the Loud committee had not reported two in-kind contributions from party units. These contributions were access to a voter file valued at \$450 and web design services worth \$500. In discussions with Board staff, the committee explained that it had not reported these items because the committee did not realize that the provided web design services and voter file access were contributions.

The committee amended its 2016 year-end report to include the in-kind contributions, but incorrectly stated that the voter file access was a \$450 cash contribution. The report showed that the committee had accepted \$10,950 in contributions from political party units and terminating candidate committees. This amount exceeded the \$10,000 limit on contributions from these sources for the 2015-2016 election segment by \$950. The committee did not submit any documentation showing that it had returned \$950 in contributions to party units or terminating candidate committees within 90 days as provided in Minnesota Statutes section 10A.15, subdivision 3.

The offered conciliation agreement imposed a civil penalty of \$950 on the committee. Of this penalty, \$250 was due within 30 days of the date that the agreement was signed by both parties. The remaining \$700 was stayed and then waived if the committee did not violate the party unit limit again before January 1, 2019. The offered agreement also required the committee to return \$950 to party unit contributors and to amend its 2016 report to correctly disclose the in-kind contributions and a related in-kind contribution from the candidate.

After the March meeting, Board staff sent the proposed conciliation agreement to candidate Loud and asked him to indicate his acceptance of the agreement by signing the document and returning it to the Board. Candidate Loud did not return the offered conciliation agreement or contact Board staff to make another proposal to resolve the matter informally. Consequently, at the May 2, 2018, meeting,

the Board issued findings, conclusions, and an order in the matter. The Board ordered the Loud committee to pay a civil penalty of \$950, to return \$950 to special source contributors, and to make the amendments necessary to show the actual nature of the contributions on the committee's report.

On May 8, 2018, Mr. Loud and his committee treasurer contacted Board staff and submitted documentation showing that in 2016 the committee had returned \$500 to a terminating candidate committee within 90 days of receipt. Because the committee had returned \$500 in contributions within 90 days of receipt, the committee actually had exceeded the party unit contribution limit by only \$450.

**Based on the above analysis, the Board makes the following:**

### **Findings of Fact**

1. The Vote Jerry Loud committee's amended 2016 year-end report showed that it had accepted \$10,950 in contributions from political party units and terminating candidate committees during the 2015-2016 election segment.
2. The Board offered candidate Loud and the committee a conciliation agreement to resolve the contribution limit violation. Candidate Loud did not accept the conciliation agreement offered by the Board to resolve this violation nor did he contact Board staff to make another proposal to resolve the matter informally.
3. Because the Board could not resolve the matter informally, it issued findings, conclusions, and an order resolving the matter on May 2, 2018.
4. After the findings were issued, the Vote Jerry Loud committee provided documentation showing that it had returned a \$500 contribution to a terminating candidate committee within 90 days of receipt.
5. Because the Loud committee returned \$500 in contributions within 90 days of receipt, the committee actually accepted only \$10,450 in contributions from political party units and terminating candidate committees during the 2015-2016 election segment.

### **Conclusions of Law**

1. The Vote Jerry Loud committee violated Minnesota Statutes section 10A.27, subdivision 2, by accepting \$450 in excess contributions from party units and terminating candidate committees during the 2015-2016 election segment.
2. Because candidate Loud did not accept the conciliation agreement offered by the Board to resolve the contribution limit violation nor make another proposal to resolve the matter informally, the Board was unable to resolve the contribution limits violation informally and had to issue findings in the matter.
3. The Board must issue revised findings because after the initial findings were issued, the Loud committee submitted documentation showing that it had returned \$500 to a terminating candidate



committee within 90 days of receipt and therefore actually had accepted only \$10,450 from party units and terminating candidate committees during the 2015-2016 election segment.

**Based on the above Findings of Fact and Conclusions of Law, the Board issues the following:  
Order**

1. The Board's March 7, 2018, offer of a conciliation agreement to resolve the matter is revoked.
2. This order replaces the order issued by the Board on May 2, 2018.
3. The Board orders the committee to do the following within 30 days of the date of this order:
  - a. pay a civil penalty of \$450 by check or money order made payable to the State of Minnesota;
  - b. return \$450 to party unit contributors and provide the Board with a copy of any checks used to return these funds;
  - c. amend its 2016 year-end report to show that the \$450 cash contribution from the Minnesota DFL State Central Committee actually was a \$450 in-kind contribution with the description "voter file access" and to show a corresponding \$450 in-kind expenditure to the Minnesota DFL State Central Committee for that access;
  - d. amend its 2016 year-end report to show a \$150 in-kind contribution from Jerry Loud with the description "voter file access" and to show a corresponding \$150 in-kind expenditure to Jerry Loud for that list to account for the portion of the voter access list that the candidate paid for and donated to the committee; and
  - e. amend its 2016 year-end report to show a \$500 in-kind expenditure to the Minnesota DFL House Caucus that corresponds to the \$500 in-kind contribution already on the report from that source.
4. If the committee does not comply with the provisions in this order within 30 days of the date of the order, the Board's executive director may request that the attorney general bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
5. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5 (a).

Dated: August 16, 2018

/s/ Carolyn Flynn

Carolyn Flynn, Chair

Campaign Finance and Public Disclosure Board