

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections and Ethics pursuant to the authority set forth in D.C. Official Code § 1-1103.01 (b-1) (1) (2001 Edition), hereby gives notice of final rulemaking action to adopt the following amendments to Chapter 37, "Investigations and Hearings," of Title 3 of the District of Columbia Municipal Regulations.

These amendments represent updates to the rules of the Board's Office of Campaign Finance (OCF). Specifically, the majority of the rules augments and clarifies the investigative procedures of the Office of Campaign Finance to provide the general public and OCF filers with a better understanding of the agency processes; to establish fines for the failure to maintain required receipts of financial transactions and the failure to provide notice of potential conflicts of interest to the Board and the Office of Campaign Finance; and to correct technical and typographical errors.

A Notice of Proposed Rulemaking with respect to these amendments was published in the D.C. Register on January 15, 2010 at 57 D.C. Reg. 632. No comments were received concerning these rules. These amendments will be effective upon publication of this notice in the D.C. Register.

Section 3700 of Chapter 37 of 3 DCMR, "Investigations in General," shall be amended to read as follows:

"3700 INVESTIGATIONS IN GENERAL

3700.1 The provisions of this chapter shall establish the procedures for the conduct of all investigations by the Director of Campaign Finance (the Director) (OCF) of alleged violations of the Campaign Finance Act (Act), and Chapters 30 - 37 of this Title.

3700.2 Investigations shall be conducted in the following manner:

- (a) Fairly and professionally; and
- (b) To protect the rights and reputations of public employees and officials.

3700.3 Investigations shall be identified as one (1) of the following:

- (a) Internal Inquiry;
- (b) Preliminary Investigation; or
- (c) Full Investigation.

- 3700.4 All proceedings and records of the OCF relating to the initiation or conduct of any investigation shall be confidential.
- 3700.5 The disposition of each investigation shall be made part of the public record.”

Section 3701 of Chapter 37 of 3 DCMR, “Initiation of Investigation,” shall be amended to read as follows:

“3701 INITIATION OF INVESTIGATION

- 3701.1 An investigation may commence upon referral by the Board of Elections and Ethics (Board) or the filing of a complaint in writing with the Director.
- 3701.2 Each complaint shall include the following:
- (a) Full name and address of the complainant and the respondent;
 - (b) A clear and concise statement of facts which are alleged to constitute a violation of the Act, or of Chapters 30 - 37 of this Title;
 - (c) Complainant’s signature;
 - (d) Verification of the complaint under oath; and
 - (e) Supporting documentation, if any.”

Section 3704 of Chapter 37 of 3 DCMR, “Full Investigations,” shall be amended to read as follows:

“3704 FULL INVESTIGATIONS

- 3704.1 A full investigation regarding any alleged violation of the Act, and Chapters 30 - 37 of this Title, shall commence upon a finding of reasonable cause by the Director.
- 3704.2 Within ten (10) days after initiation of a full investigation, the Director shall notify, in writing, the person (respondent), who is the subject of the full investigation.
- 3704.3 Notification to the respondent shall consist of the following:
- (a) A copy of the complaint;
 - (b) Explanation of the existence of the investigation and the general nature of the alleged violation; and
 - (c) An offer to the subject affording the opportunity to respond to the allegation(s).

- 3704.4 The full investigation shall be conducted by evidence gathered and explored by the following:
- (a) Subpoena;
 - (b) Depositions;
 - (c) Interrogatories;
 - (d) Interviews;
 - (e) Audits;
 - (f) Affidavits;
 - (g) Documents; and
 - (h) Other means deemed appropriate.
- 3704.5 The Director may require any person to submit in writing certain reports and answers to questions, as prescribed by the Director, relating to the administration and enforcement of the Act, and Chapters 30 - 37 of this Title.
- 3704.6 Any person required by the Director to submit in writing certain reports or to answer questions, under § 3704.5, shall submit the reports or answers, within seven (7) calendar days after receipt of the request.
- 3704.7 All submissions of reports or answers, under § 3704.6, shall be made under oath; provided, that the person is not represented by counsel.
- 3704.8 Within ninety (90) days of receipt of any complaint, the Director shall perform one (1) of the following acts:
- (a) Cause evidence to be presented to the Board, if sufficient evidence exists constituting an apparent violation, pursuant to § 3706; or
 - (b) Dismiss the complaint, if insufficient evidence exists to present the matter, pursuant to § 3705.
- 3704.9 The Director may seek, upon a showing of good cause, an extension of time as reasonably necessary to complete an investigation.”

Section 3709 of Chapter 37 of 3 DCMR, “Informal Hearing for Alleged Violations of Reporting Requirements,” shall be amended to read as follows:

“3709 INFORMAL HEARING FOR ALLEGED VIOLATIONS OF REPORTING REQUIREMENTS

- 3709.1 The Director may institute or conduct an informal hearing on alleged violations of the reporting and disclosure requirements, prescribed by the Act and Chapters 30 - 37 of this Title.
- 3709.2 The reporting and disclosure requirements shall apply to the following:
- (a) Lobbyist Activity Report;
 - (b) Lobbyist Registration Form;
 - (c) Citizen-Service Activity Report;
 - (d) Financial Disclosure Statement (FDS);
 - (e) Statement of Potential Conflict of Interest;
 - (f) Report of Receipts and Expenditures (R&E Report);
 - (g) Notification required on campaign literature, pursuant to the Act;
 - (h) The responses to Requests for Additional Information (RFAI);
 - (i) Statement of Candidacy;
 - (j) Statement of Organization;
 - (k) Statement of Information;
 - (l) ANC Summary Financial Statement; and
 - (m) Honoraria and Outside Income Disclosure Statement (HOIDS); and
 - (n) Statehood Fund Report.
- 3709.3 Notice of an informal hearing shall be issued in writing at least seven (7) days prior to the hearing.
- 3709.4 In the notice, an alleged violator of the reporting requirements shall be informed of the following:
- (a) Nature of the alleged violation;
 - (b) The authority on which the hearing is based;
 - (c) Time and place of the hearing;
 - (d) The right to be represented by legal counsel; and
 - (e) The alleged violator's failure to appear may be considered an admission of the allegation.

- 3709.6 The Director shall regulate the course of the informal hearing and the conduct of the parties and their counsel.
- 3709.7 The alleged violator, or counsel for the alleged violator, shall present the alleged violator's case and evidence to the Director.
- 3709.8 The Director may wait a reasonable period of time for the alleged violator to appear before beginning the informal hearing.
- 3709.9 If the alleged violator fails to appear after a reasonable period of time, the Director shall perform the following:
- (a) Reschedule the informal hearing;
 - (b) Issue the Notice of Informal Hearing, under §§ 3709.3 and 3709.4; and
 - (c) Serve the alleged violator both by certified and regular mail.
- 3709.10 If the alleged violator fails to appear after an informal hearing has been rescheduled, under § 3709.9, the Director may proceed with the informal hearing; provided, that the alleged violator has received notice.
- 3709.11 Following the conduct of each informal hearing, the Director shall perform the following:
- (a) Determine whether a violation has occurred; and
 - (b) Issue a written order with findings of facts and conclusions of law.
- 3709.12 Any party adversely affected by any order of the Director may obtain review of the order by filing, with the Board of Elections and Ethics, a request for a hearing de novo.
- 3709.13 The request for a hearing de novo, under § 3709.12, shall be filed in the following manner:
- (a) Within fifteen (15) days from the issuance by the Director of an order; and
 - (b) In accordance with Chapter 4 of this Title."

Section 3711 of Chapter 37 of 3 DCMR, "Schedule of Fines," shall be amended to read as follows:

"3711 SCHEDULE OF FINES

3711.1 Upon a determination, pursuant to §§ 3705 or 3709, that a violation has occurred, the Director may ministerially impose fines upon the offending party, in the following manner:

- (a) Each allegation shall constitute a separate violation; and
- (b) A fine shall attach for each day of non-compliance for each violation.

3711.2 Fines shall be imposed as follows:

- (a) Contribution or expenditure made while office of treasurer is vacant \$50 per day;
- (b) Failure to designate a principal campaign committee \$30 per day;
- (c) Failure to designate a campaign depository \$30 per day;
- (d) Failure to file a statement of organization for a political committee \$30 per day;
- (e) Failure to file a candidate registration statement \$30 per day;
- (f) Failure to file R&E Reports, including five hundred dollars (\$ 500) Exemption report \$50 per day;
- (g) Accepting legal tender of twenty-five dollars (\$25) or more \$500;
- (h) Failure to file a Statement of Information \$30 per day;
- (i) Use of Statehood funds for political activities \$2,000;
- (j) Failure to file an Honoraria and Outside Income Disclosure Statement \$50 per day;
- (k) Acceptance of honoraria in excess of \$10,000 - \$500;
- (l) Acceptance of royalties in excess of \$10,000 - \$500;
- (m) Deposit contributions in accounts other than campaign depositories \$500;
- (n) Failure to place notices required by the Act on campaign literature \$500;
- (o) Accepting contributions in excess of contribution limitations \$2,000;
- (p) Making contributions in excess of contribution limitations \$1,000;

- (q) Accepting a contribution made by one person in the name of another person \$2,000;
- (r) Making contributions in the name of another person \$2,000;
- (s) Accepting contributions in excess of the citizen-services program contribution limitation \$2,000;
- (t) Making contributions in excess of the citizen-services program contribution limitation \$1,000;
- (u) Conducting campaign activities in citizen-services program \$2,000;
- (v) Use of official position for personal financial gain \$2,000;
- (w) Accepting, soliciting or giving any thing of value to influence official government actions, or where it could be inferred that the thing of value would influence the public official in the discharge of his or her duties \$2,000;
- (x) Accepting or giving money to a public official in addition to the public official's compensation for the performance of official duties \$2,000;
- (y) Use or disclosure of official confidential information by public official for personal financial gain \$2,000;
- (z) Failure to disclose potential conflicts of interest \$2,000;
- (aa) Failure to file Financial Disclosure Statement (FDS) \$50 per day;
- (bb) Failure to timely dispose of surplus campaign funds \$50 per day;
- (cc) Failure to file additional information requested by the Director \$50 per day;
- (dd) Failure to disclose required information on reports and statements \$50 per day;
- (ee) Failure to file ANC Summary Financial Report \$30 per day;
- (ff) Failure to register as a lobbyist \$10 per day; and
- (gg) Failure to file lobbyist activity reports \$10 per day;

- (hh) Failure to file Statement of Acceptance of Position of Chairperson \$30 per day;
 - (ii) Failure to file Statement of Acceptance of Position of Treasurer \$30 per day;
 - (jj) Making expenditures in excess of expenditure limitations \$1000;
 - (kk) Using District government resources for campaign related activities \$2000;
 - (ll) Failure to designate an exploratory committee \$30 per day;
 - (mm) Failure to file Informational Report \$50 per day;
 - (nn) Accepting contributions in excess of aggregate limitations \$2000;
 - (oo) Failure to maintain records required under § 3400.2 \$2000;
 - (pp) Failure to provide notice of potential conflicts of interest to the Board and the Director under § 3303.1 \$2000.
- 3711.3 The aggregate of the penalties imposed under the Director's authority, under § 371 1.2, may not exceed \$2000 for each violation.
- 3711.4 In calculating the time period for delinquencies, Saturdays, Sundays, and holidays shall not be included.
- 3711.5 Any fine imposed by the Director, pursuant to § 3711.2, shall become effective on the sixteenth (16th) day following the issuance of a decision and order; provided, that, the respondent does not request a hearing pursuant to § 3709.12.
- 3711.6 The Director may modify, rescind, dismiss or suspend any fine imposed, pursuant to § 3711, for good cause shown; provided, that fines imposed for failure to file an eight (8) day pre-election report shall be mandatory, unless a written extension for filing the report, pursuant to chapter 30 of this title, has been granted by the Director.
- 3711.7 Fines imposed pursuant to this chapter shall be paid within ten (10) days of the effective date, at the OCF, Frank D. Reeves Municipal Building, 2000 - 14th Street, N.W., Washington, D.C., 20009, by money order or check made payable to the D.C. Treasurer.
- 3711.8 If a party fails to pay the ordered fine, the Director may petition for enforcement of its order, within sixty (60) days of the expiration of the period provided for payment of the fine, under § 3711.7, before the Board

in an adversary proceeding and an open hearing, under Chapter 4 of this Title.”

Section 3712 of Chapter 37 of 3 DCMR, “Procedures Regarding Excess Contributions,” shall be amended to read as follows:

“3712 PROCEDURES REGARDING EXCESS CONTRIBUTIONS

- 3712.1 The Director shall determine whether any contribution made to a person was in excess of the aggregate maximum to which the person was entitled.
- 3712.2 Upon a determination of excess contribution, under § 3712.1, the Director shall notify the person in writing of the following:
- (a) The amount of the excess contribution;
 - (b) The expectation of repayment to the contributor of the amount equal to the excess contribution; and
 - (c) Repayment shall be accomplished within fifteen (15) days of the notice.
- 3712.3 Any person required by the Director to pay an excess contribution, under § 3712.1, may apply in writing to the Director for an extension of time in which to repay the excess contribution.
- 3712.4 The Director may grant an extension for a reasonable amount of additional time for good cause to any person who files an application, under § 3712.3.
- 3712.5 If the person disputes the Director’s determination, under § 3712.1, the person shall advise the Director in writing within seven (7) days upon receipt of the notice issued under § 3712.2.
- 3712.6 Within ten (10) days after receipt of the notice disputing the Director’s determination of excess contribution, filed under § 3712.5, the Director shall schedule and conduct an informal hearing, in accordance with § 3709.”