

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

NOTICE OF PROPOSED 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) (2011 Repl.), hereby gives notice of its intent to adopt the following amendments to chapter 37, Investigations and Hearings, of title 3 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of the publication of this notice in the *D.C. Register*.

The proposed amendments represent updates to the rules of the Board's Office of Campaign Finance (OCF). Specifically, the majority of the rules: augment and clarify the investigative procedures of OCF to provide the general public and OCF filers with a better understanding of the agency's processes; enable OCF to issue subpoenas in the event of an individual's failure to timely submit requested reports and answers during the course of an investigation; establish fines for the failure to pay lobbyist registration fees; expressly specify the authority of the Director to impose civil penalties in the disposition of full investigations; to waive for good cause shown the seven (7) day notice required for the scheduling of hearings; and correct technical and typographical errors.

Section 3700, Investigations in General, of chapter 37, Investigations and Hearings, of 3 DCMR is 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 (Director) 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 Office of Campaign Finance (OCF) relating to the initiation or conduct of any investigation shall be confidential and closed to the public, except all orders of the Director issued during investigative proceedings shall be made available to the public.
- 3700.5 The disposition of each investigation shall be made part of the public record.

Section 3709, Informal Hearing for Alleged Violations of Reporting Requirements, of chapter 37, Investigations and Hearings, of 3 DCMR, is 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;
- (e) Statement of Potential Conflict of Interest;
- (f) Report of Receipts and Expenditures;
- (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) Advisory Neighborhood Commission (ANC) Summary Financial Statement;
- (m) Honoraria and Outside Income Disclosure Statement; 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; provided that the seven (7) day period may be waived for good cause shown as long as the party is given a sufficient opportunity to prepare for 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.

3709.5 The Director shall regulate the course of the informal hearing and the conduct of the parties and their counsel.

3709.6 The alleged violator, or counsel for the alleged violator, shall present the alleged violator's case and evidence to the Director.

3709.7 The Director may wait a reasonable period of time for the alleged violator to appear before beginning the informal hearing.

3709.8 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 pursuant to § 3709.3 and 3709.4; and
- (c) Serve the alleged violator both by certified and regular mail.

3709.9 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.

3709.10 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.

3709.11 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*.

3709.12 The request for a hearing *de novo* pursuant to § 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, Schedule of Fines, of Chapter 37, Investigations and Hearings, of 3 DCMR 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: fifty dollars (\$50) per day;
- (b) Failure to designate a principal campaign committee: thirty dollars (\$30) per day;
- (c) Failure to designate a campaign depository: thirty dollars (\$30) per day;
- (d) Failure to file a statement of organization for a political committee: thirty dollars (\$30) per day;
- (e) Failure to file a candidate registration statement: thirty dollars (\$30) per day;
- (f) Failure to file R&E Reports, including five hundred dollars (\$ 500) Exemption report: fifty dollars (\$50) per day;
- (g) Accepting legal tender of twenty-five dollars (\$25) or more: five hundred dollars (\$500);
- (h) Failure to file a Statement of Information: thirty dollars (\$30) per day;
- (i) Use of Statehood funds for political activities: two thousand dollars (\$2,000);
- (j) Failure to file an Honoraria and Outside Income Disclosure Statement: fifty dollars (\$50) per day;

- (k) Acceptance of honoraria in excess of ten thousand dollars (\$10,000): five hundred dollars (\$500);
- (l) Acceptance of royalties in excess of ten thousand dollars (\$10,000): five thousand dollars (\$500);
- (m) Deposit contributions in accounts other than campaign depositories: five hundred dollars (\$500);
- (n) Failure to place notices required by the Act on campaign literature: five hundred dollars (\$500);
- (o) Accepting contributions in excess of contribution limitations: two thousand dollars (\$2,000);
- (p) Making contributions in excess of contribution limitations: one thousand dollars (\$1,000);
- (q) Accepting a contribution made by one person in the name of another person: two thousand dollars (\$2,000);
- (r) Making contributions in the name of another person: two thousand dollars (\$2,000);
- (s) Accepting contributions in excess of the citizen-services program contribution limitation: two thousand dollars (\$2,000);
- (t) Making contributions in excess of the citizen-services program contribution limitation: one thousand dollars (\$1,000);
- (u) Conducting campaign activities in citizen-services program: two thousand dollars (\$2,000);
- (v) Use of official position for personal financial gain: two thousand dollars (\$2,000);
- (w) Accepting, soliciting or giving anything 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: two thousand dollars (\$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: two thousand dollars (\$2,000);
- (y) Use or disclosure of official confidential information by public official for personal financial gain: two thousand dollars (\$2,000);
- (z) Failure to disclose potential conflicts of interest: two thousand dollars (\$2,000);

- (aa) Failure to file Financial Disclosure Statement (FDS): fifty dollars (\$50) per day;
- (bb) Failure to timely dispose of surplus campaign funds: fifty dollars (\$50) per day;
- (cc) Failure to file additional information requested by the Director: fifty dollars (\$50) per day;
- (dd) Failure to disclose required information on reports and statements: fifty dollars (\$50) per day;
- (ee) Failure to file ANC Summary Financial Report: thirty dollars (\$30) per day;
- (ff) Failure to register as a lobbyist: seven hundred fifty dollars (\$750);
- (gg) Failure to file lobbyist activity reports: ten dollars (\$10) per day, up to thirty (30) days;
- (hh) Failure to file Statement of Acceptance of Position of Chairperson: thirty dollars (\$30) per day;
- (ii) Failure to file Statement of Acceptance of Position of Treasurer: thirty dollars (\$30) per day;
- (jj) Making expenditures in excess of expenditure limitations: one thousand dollars (\$1000);
- (kk) Using District government resources for campaign related activities: two thousand dollars (\$2000);
- (ll) Failure to designate an exploratory committee: thirty dollars (\$30) per day;
- (mm) Failure to file Informational Report: fifty dollars (\$50) per day;
- (nn) Accepting contributions in excess of aggregate limitations: two thousand dollars (\$2000);
- (oo) Failure to maintain records required under § 3400.2: two thousand dollars (\$2000);
- (pp) Failure to provide notice of potential conflicts of interest to the Board and the Director: two thousand dollars (\$2000).

3711.3 The aggregate of the penalties imposed under the Director's authority, pursuant to § 371 1.2, may not exceed two thousand dollars (\$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, is 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.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of the General Counsel, Board of Elections and Ethics, 441 4th Street, N.W., Suite 270N, Washington, D.C. 20001. Copies of the proposed rules may be obtained at cost from the above address, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m.