

RULES OF THE ETHICS COMMISSION PROPOSED AMENDMENTS and/or DRAFTS

for the 2012 Legislative Session
[Section 257:1-1-1 et seq., 74 O.S. 2011, Ch. 62, App.]
for consideration at the September 30, 2011
Regular Meeting of the Ethics Commission¹
[incorporated into the Notice/Agenda by reference]

SYNOPSIS OF AMENDMENTS

Amendment	Section	Subject
1.	257:10-1-2(b)	would require a contribution of more than \$50, for which no contributor statement was obtained, to be returned within 30 days of completing a 30-day effort but failing to obtain the contributor statement
2.	257:10-1-2(e)(2)	makes no changes beyond the 2011 amendments; however, it is carried forward because members have requested further study of the ban on PAC-to-PAC transfers
3.	257:20-1-4(a)	would except, from the limitations on use of office, compensation and expenses only when paid to a state officer/employee for performance of his or her job
4.	257:10-1-14(a)(12) and (13) and (c) and 257:10-1-16	would require itemized disclosure of all independent expenditures according to the state committee reporting schedule by both committees and other persons who would certify that the disbursements were not made in cooperation, consultation, or in concert with, or at the request or suggestion of, a candidate, committee, treasurer, deputy treasurer or agent of a candidate committee or ballot measure committee
5.	257:10-1-9(d)(3)	would require all committees with more than \$500 in activity to file campaign statements of organization and contributions and expenditures reports electronically

¹Commission procedure is to receive oral or written comments on rule amendments at each regular meeting throughout the year, with formal public hearings held in November and December. A vote may be taken at any regular meeting but no later than the January 2012 Regular Meeting.

ETHICS COMMISSION
STATE OF OKLAHOMA

DISPOSITION BY COMMISSION

RULE AMENDMENT

No. 1

(Date)

Mr. Chairman:

I agree to sponsor Ethics Commission Rule Nos. 257:10-1-2(b) as follows:

257:10-1-2 Contributions.

* * *

(b) **Contributor statement.** Within ten (10) business days of accepting a single contribution exceeding fifty dollars (\$50.00), or accepting multiple contributions from a single source which exceed fifty dollars (\$50.00) in the aggregate, persons accepting contributions must obtain from each contributor a statement which shall include:

- (1) the date the contribution was given;
- (2) the name and address, occupation [e.g. "retail sales clerk"] and employer [e.g. "Dillard"], or principal business activity of the contributor; a contribution from a person other than an individual or a committee shall be reported by the name of the person or committee and not the individual who signed the check;
- (3) the amount; if in-kind, a description of the contribution and a good faith estimate of its fair market value;
- (4) a declaration that the contribution is for a campaign in the State of Oklahoma, and the contribution is freely and voluntarily given from the contributor's personal property, if an individual, or the person or committee's property, if other than an individual;
- (5) a declaration that the contributor has not been directly or indirectly compensated or reimbursed for the contribution, if an individual, and, if a person other than an individual or a committee, that the person or committee has not been compensated or reimbursed for the contribution by persons:
 - (A) other than those from whom contributor statements have been received and of whom disclosure has or will be made; or
 - (B) if from persons exempted from the definition of political action committee, by other persons; and
- (6) the signature of the contributor, or in the case of a committee, the treasurer or, in the treasurer's absence, the deputy treasurer of the committee.

Persons accepting contributions from contributors who contribute by payroll deduction, dues check-off, or similar process shall be required to obtain only one contributor

statement annually or at such other times as a change is made in the deduction, check-off, or similar process.

If no contributor statement has been obtained within ten (10) days after a contribution is accepted, or if a contributor statement obtained pursuant to the provisions of this subsection is incomplete, the treasurer shall make at least three efforts after acceptance of the contribution to obtain the missing information. Such efforts shall consist of either a mailed or electronic request sent to the contributor. All three separate requests must be made no later than thirty (30) days after acceptance of the contribution. The requests shall not include material on any other subject or any additional solicitation, except that they may include language solely thanking the contributor for the contribution. The requests must clearly ask for the contributor statement or the missing information and must include an accurate statement of this rule regarding the collection and reporting of contribution identifications. All requests must include the statement in a clear and conspicuous manner. In the case of mailed requests, the requests shall be accompanied by a pre-addressed return post card or envelope for the response material. In the case of electronic requests, the requests shall include specific instructions for submitting the contributor statement or missing information. If the treasurer makes such effort within the thirty (30) day time period prescribed in this paragraph, the person accepting the contribution shall be deemed to be in compliance with the provisions of this subsection. Thereafter, the treasurer must return the contribution within thirty (30) days.

* * *

Submitted by

Commissioner John Raley

Explanation: This amendment would require a contribution of more than \$50, for which no contributor statement was obtained, to be returned within 30 days of completing a 30-day effort but failing to obtain the contributor statement.

Purpose: The purpose of this amendment is to require the return of a contribution if no contributor statement is received.

Person requesting amendment: This amendment was requested by Lynn Howell, on behalf of Common Cause Oklahoma.

ETHICS COMMISSION
STATE OF OKLAHOMA

DISPOSITION BY COMMISSION

RULE AMENDMENT

No. 2

(Date)

Mr. Chairman:

I agree to sponsor Ethics Commission Rule Nos. 257:10-1-2(e)(2) as follows:

257:10-1-2. Contributions

* * *

(e) Prohibition on transfer of funds between committees.

* * *

(2) **Political action committee transfers.** A political action committee shall not make a contribution to another political action committee as specified herein. A political action committee shall not accept a contribution from another political action committee as specified herein. This subsection shall not prohibit:

(A) a political action committee, including an out-of-state committee also registered in another state or states and a committee also registered under the laws of the United States, from making a transfer to a ballot measure committee;

(B) a political action committee from making a transfer to a committee formed solely to make independent expenditures or electioneering communications; or

(C) a political action committee from making a transfer to its own affiliated or connected entity in accordance with the definition of contribution, Section 2, Paragraph (2), Subparagraph (B) of Chapter 1 of this title.

* * *

Submitted by

Commissioner

Explanation: This amendment makes no changes beyond the 2011 amendments submitted to the Legislature.

Purpose: This amendment makes no changes beyond the 2011 amendments; however, it is carried forward because members have requested further study of the ban on PAC-to-PAC transfers.

Person requesting amendment: Further study of this issue was requested by the Commission.

ETHICS COMMISSION
STATE OF OKLAHOMA

DISPOSITION BY COMMISSION

RULE AMENDMENT

No. 3

(Date)

Mr. Chairman:

I agree to sponsor Ethics Commission Rule No. 257:20-1-4(a) as follows:

257:20-1-4. Misuse of office

(a) No state officer or state employee shall use or attempt to use his or her official position to solicit or secure special privileges, exemptions or compensation for himself; or herself. An officer or employee may receive compensation and expenses paid for the performance of his or her duties as allowed by law. No state officer or state employee shall use his or her official position to solicit or secure special privileges, exemptions or compensation for or others, except in the performance of his or her duties or as may be allowed by law. "Attempt" shall mean that the state officer or state employee intended to violate this section and performed any overt act toward accomplishing the violation of this section. Such prohibited activity shall include accepting compensation for an article, appearance or speech, or for participation at an event, as set forth in Subsection (h) of Section 9 of Chapter 20 of this title. Such prohibited activity, except as provided by statute, shall not include: ...

* * *

Submitted by

Commissioner

Explanation: This amendment assumes changes made in 2011 become effective. It would except, from the limitations on use of office, compensation and expenses only when paid to a state officer/employee for performance of his or her job duties.

Purpose: The purpose of this amendment is to clarify that "except in the performance of his or her duties" means accepting compensation and expenses only when paid to a state officer/employee for the performance of his or her job duties.

Person requesting amendment: This amendment was requested by Andrew Tevington, General Counsel of the Oklahoma Corporation Commission.

ETHICS COMMISSION
STATE OF OKLAHOMA

DISPOSITION BY COMMISSION

RULE AMENDMENT

No. 4

(Date)

Mr. Chairman:

I agree to sponsor Ethics Commission Rule No. 257:10-1-14(a)(12)(13) and (c) and Rule No. 257:10-1-16 as follows:

257:10-1-14. Report contents

(a) **Basic reporting form.** The campaign contributions and expenditures report shall include:

* * *

(12) the following information about expenditures:

(A) the total of expenditures made during the reporting period and the year-to-date or campaign-to-date total;

(B) the amount, date, a brief description of the consideration, and an explanation of the purpose —which must permit a reasonable person to determine the reason for the purchase —for which each campaign expenditure was made in excess of one thousand dollars (\$1,000.00) in the aggregate to one (1) entity during the reporting period, the name and address of the person to which the expenditure was made, the beneficiary of the expenditure and the year to date total. Disbursements to consultants, advertising agencies, and similar firms; credit card expenses; and candidate reimbursements must be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose;

(C) the total amount of all campaign expenditures not required to be reported in Subparagraph (B); and

(D) Committees may file all expenditures in lieu of the additional bookkeeping requirement of grouping together all expenditures aggregating ~~\$50~~ one thousand dollars (\$1,000) or less to one entity and all expenditures aggregating more than ~~\$50~~ one thousand dollars (\$1,000) to one entity;

Provided, a committee shall not divide expenditures which would otherwise be made individually for the purpose of evading the reporting requirements of this paragraph;

(13) the following information about independent expenditures:

- (A) the total of independent expenditures made during the reporting period and the year-to-date or campaign-to-date total;
- (B) the amount, the date, ~~and~~ a brief description of ~~what was purchased for~~ the consideration, and an explanation of the purpose of each individual independent expenditure in excess of ~~fifty one thousand~~ dollars ~~(\$50)~~ \$1,000 in the aggregate ~~was made to one (1) entity~~ during the reporting period, the name and address of the person to which the independent expenditure was made, the beneficiary of the independent expenditure as well as the name and office sought if a candidate or candidates or the number assigned to, or description of, the issue or issues if a ballot measure or ballot measures and the year to date total ~~the purpose of the expenditure~~; and
- (C) the total of independent expenditures not required to be reported in Subparagraph (B).
- (D) Committees may file all independent expenditures in lieu of the additional bookkeeping requirement of grouping together all independent expenditures aggregating ~~\$50~~ \$1,000 or less to one entity and all independent expenditures aggregating more than ~~\$50~~ \$1,000 to one entity; and
- (E) a certification that such independent expenditure was not made in cooperation, consultation, or in concert with, or at the request or suggestion of, a candidate, committee, treasurer, deputy treasurer or agent of a candidate committee or ballot measure committee.

Provided, a committee shall not divide independent expenditures which would otherwise be made individually for the purpose of evading the reporting requirements of this paragraph;

* * *

(c) Statements by other than committees; filing; contents.

- (1) Every person (other than a committee) who makes independent expenditures in an amount or value in excess of \$1,000 shall file a statement by Internet access only containing the information required by Paragraphs (2) and (3) of Subsection (a) of this section for all contributions received by such person.
- (2) Statements required to be filed by this subsection shall be made in accordance with Section 13 of this Chapter, and shall contain:
- (A) the identification, address and electronic mailing address of the person making the independent expenditure, of any person sharing or exercising direction or control over the activities of such person, and the custodian of the books and accounts of the person making the independent expenditure;
- (B) the occupation and employer of the individual or the principal place of business of the person making the independent expenditure, if not an individual;
- (C) the information required by (a)(13)(b) of this section; and

(D) a certification that such independent expenditure was not made in cooperation, consultation, or in concert with, or at the request or suggestion of, a candidate, committee, treasurer, deputy treasurer or agent of a candidate committee or ballot measure committee.

Rule 10-1-16. Report of last minute independent expenditures and electioneering communications

(a) Independent expenditures ~~by committee.~~

(1) ~~A committee or person, including an out-of-state committee or person, that makes an independent expenditure of five hundred one thousand dollars ~~(\$500) (\$1,000)~~ or more after the closing date for the pre-election reporting period, but before the election, shall file a report by Internet access only containing the total amount, the date, the name and address of the entity to which the independent expenditure was made; items purchased, description of the consideration for the expenditure and the purpose, whether support or opposition, and the beneficiary, whether as well as the name and office sought if a candidate or the number assigned, or description of, the issue if a ballot measure, for each individual independent expenditure on the paper form or electronically transmitting the information on the form to the Commission office by United States mail, hand delivery, facsimile transmission, telegram, or express delivery service~~ within twenty-four (24) hours of making the expenditure. The report shall include ~~the signature or typed signature on electronically filed forms of a certification by~~ the person making the expenditure, or the treasurer or, in the treasurer's absence, the deputy treasurer of a reporting committee, ~~who shall~~ that such independent expenditure was not made in cooperation, consultation, or in concert with, or at the request or suggestion of, a candidate, committee, treasurer, deputy treasurer or agent of a candidate committee or ballot measure committee and to attest to the report's accuracy and veracity. This ~~If filed by a committee,~~ the information shall be included on the next report filed on paper, or electronically transmitted by the committee.

(b) ~~Independent expenditures by person other than committee. A person other than a committee that makes an independent expenditure of Five Hundred Dollars (\$500.00) or more at any time, shall file a report with the Commission disclosing the name of such person and street address, city, state and zip code, occupation and employer or principal business activity, along with the recipient's name, street address, city, state and zip code, description of the payment, the date, the amount, the name of one or more candidates or ballot measures mentioned, the purpose of the independent expenditure, and how much was spent regarding each candidate or ballot measure for each individual independent expenditure. The report shall be filed on the paper form or by electronically transmitting the information to the Commission office by United States mail, hand delivery, facsimile transmission, telegram, or express delivery service within twenty four (24) hours of making the expenditure. The report shall include the signature, or typed signature on electronically filed forms, of the person making the expenditure, who shall attest to the report's accuracy and veracity.~~

(e) Electioneering communications.

(1) Any person, including an out-of-state committee, who makes a payment or payments or promise of payment or payments totaling five thousand dollars (\$5,000) or more for an electioneering communication or series of electioneering communications shall file a statement with the Commission disclosing the name of such person and street address, city, state and zip code, occupation and employer, along with the recipient's name, street address, city, state and zip code, description of the payment, the amount, the name of one or more candidates mentioned, the purpose of the communication or series of communications and how much was spent regarding each candidate mentioned. Additionally, an out-of-state committee or person, except a corporation or labor organization, who accepts donations from other persons shall provide the name and address of the financial institution at which the account required by subsection (f) of Section 10 of this chapter is maintained. The report shall be filed within twenty-four (24) hours of making the payment or payments or the promise to make the payment or payments.

(2) Except as provided in paragraph (1), if any person other than an out-of-state committee or person has received a payment or payments or a promise of payment or payments from other persons totaling fifty dollars (\$50) or more for the purpose of making an electioneering communication or series of electioneering communications, the person receiving the payments shall disclose on the report the name, street address, city, state, zip code, occupation and employer, date and amount received from each person who has made a payment of fifty dollars (\$50) or more since the beginning of the calendar year.

(3) Except as provided in paragraph (1), if an out-of-state committee or person has received a payment or a promise of payment from other persons totaling two hundred dollars (\$200.00) or more for the purpose of making an electioneering communication within this state, the committee or person receiving the payments shall disclose on the report the number and amount of payments of less than two hundred dollars (\$200.00) and the name, street address, city, state, zip code, occupation and employer, date and amount received from each person who has made a payment of two hundred dollars (\$200.00) or more on a last-in-first-out-basis in an amount which equals or exceeds the amount of payments for electioneering communications made in this state with respect to elections governed by this chapter. Such a committee or person shall also report all contributions from Oklahoma contributors within the twelve-month period preceding the last date of the reporting period.

(4) A person who receives or is promised a payment or payments that are otherwise reportable under Paragraph (1) is not required to report the payment or payments if the person is in the business of providing goods or services and receives or is promised the payment or payments for the purpose of providing those goods or services.

Submitted by

Commissioner

Explanation: This amendment would require itemized disclosure of all independent expenditures according to the state committee reporting schedule by both committees and other persons who would certify that the disbursements were not made in cooperation, consultation, or in concert with, or at the request or suggestion of, a candidate, committee, treasurer, deputy treasurer or agent of a candidate committee or ballot measure committee.

Purpose: The purpose of this amendment is to require timely reporting of independent expenditures which advocate the election or defeat of a candidate or ballot measure by any committee, individual or other person.

Person requesting amendment: This amendment was drafted by the Ethics Commission staff in response to Legislators' request for timely disclosure of independent expenditures which, pursuant to *Buckley v Valeo* and *Citizens United v FEC*, may not be limited by source or amount. It has not been reviewed by Commissioners or the public.

ETHICS COMMISSION
STATE OF OKLAHOMA

DISPOSITION BY COMMISSION

RULE AMENDMENT

No. 5

(Date)

Mr. Chairman:

I agree to sponsor Ethics Commission Rule No. 257:10-1-9(d)(3) as follows:

257:10-1-9. Committee officers and agents

* * *

(d) **Duties of the treasurer/deputy treasurer.**

* * *

(3) The treasurer or, in the treasurer's absence, the deputy treasurer of a committee shall file, in a timely manner, the appropriate reports or statements on the forms prescribed by the Commission. Filing statements and reports by Internet access only shall be required of a candidate committee which has exceeded ~~\$10,000~~ \$500 in contributions or expenditures during an active campaign or a non-candidate committee which has exceeded ~~\$10,000~~ \$500 in contributions or expenditures during the current or previous calendar year.

* * *

Submitted by

Commissioner

Explanation: This amendment would require all committees with more than \$500 in activity to file campaign statements of organization and contributions and expenditures reports electronically.

Purpose: The purpose of this amendment is inform citizens of the financing of political campaigns by lowering the threshold for mandatory electronic filing from \$10,000 to \$500.

Person requesting amendment: This amendment was requested by Dr. John Wood.