



STATE OF WASHINGTON  
**PUBLIC DISCLOSURE COMMISSION**

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June 13, 2016

TO: Commission Members  
FROM: Tony Perkins, Compliance Officer  
RE: **Preliminary Discussion – Rule Making or other Future  
Commission Action Regarding the Use of Campaign Funds for  
Post-Election Expenses**

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**Agenda Item**

At its June 23, 2016 meeting, the Commission is scheduled to consider the use of campaign funds for post-election expenses. Following discussion, the Commission may decide to begin the rulemaking process to provide guidance on the question to candidates and political committee officers. The Commission may also direct staff to work on an interpretive statement, or take some other action.

**Background**

The Commission has previously considered issues related to this question, i.e., the use of contributions and expenditures governed under RCW 42.17A either partially or completely outside the context of an active election campaign.

In 2009, the Commission began preliminary discussions concerning legal defense funds established by a candidate or elected official to defray attorney's fees and other legal costs, including costs incurred in a campaign or electoral context. This discussion continued into 2010, when the Commission and PDC staff studied the issue with representatives of the Executive Ethics Board, the Legislative Ethics Board, and the Commission on Judicial Conduct. In 2011, the staff of the four agencies issued a report titled *Legal Defense Funds Work Group Report*, a copy of which is enclosed with this memo.

In the 2012 legislative session, the Commission requested legislation to bring legal defense funds under the reporting framework of RCW 42.17A. However, that legislation, SB 6056, did not become law.

In 2012, following discussion by the Commission at its September 27, 2012 meeting, PDC General Counsel Nancy Krier issued guidance to Attorney Rob Maguire in response to questions concerning the use of a candidate's active or surplus campaign funds for election recounts and election-related litigation, contributions to or made by a bona fide political party committee for the same purposes, and any reporting requirements and limits that apply to donated legal services. Among other guidance, Nancy's memo stated that legal defense funds established by a candidate remain outside the reporting framework of RCW 42.17A, with the exception of the potential requirement to disclose income on the Personal Financial Affairs Statement reporting form (F-1). A copy of Nancy's guidance is enclosed with this memo.

### **Current Washington Law**

Washington law provides a cutoff date for contributions to candidates who are subject to contribution limits. For the primary election, contributions subject to primary limits may not be made after the date of the primary election unless the candidate loses the election, has debts outstanding as of the date of that election, and has insufficient funds to pay those debts. RCW 42.17A.405(2). In this case, the candidate may conduct additional fundraising against primary limits up to thirty days following the primary election. WAC 390-17-302 defines "outstanding primary debts," "outstanding debts" and "debts outstanding." The definition does not include recounts or recount litigation. The rule requires a losing primary election candidate to return all post-primary contributions in excess of the amount needed to satisfy outstanding primary debts to the contributors of the funds.

Candidates who lose in the primary election or are otherwise not a candidate in the general election must also return general election-designated contributions to the contributors of the funds. WAC 390-17-300(6). There is no requirement for a candidate to return contributions received from a political party or caucus committee, since those contributions are aggregated for the election cycle, and not for the primary or general election.

Candidates who are subject to limits and who appear on the general election ballot may accept contributions applied to the contributor's general election limit if the contributions are made on or before December 31<sup>st</sup> of the election year. RCW 42.17A.405(2).

There is no deadline in law or rule for a candidate to cease expenditures from the candidate's campaign account and dispose of remaining funds. However, the Commission's rules provide that if an expenditure made from surplus funds qualifies the person making the expenditure as a candidate or political committee in a future election, the person must file a final report for the prior campaign, and



a registration statement and initial report for the new campaign. WAC 390-16-230.

In addition, at all times, the law restricts the expenditure of contributions received and reported under RCW 42.17A for personal use. RCW 42.17A.445. The Commission's rules provide that any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a personal use of campaign funds, and assumed to be prohibited. WAC 390-16-238. The rule further provides that an expenditure of a candidate's campaign funds shall be considered personal use if it fulfills or pays for any commitment, obligation or expense that would exist irrespective of the candidate's election campaign.

Among other guidance proposed by Nancy Krier, at its September 27, 2012 meeting, the Commission concurred that a candidate's active campaign funds may be used for post-election recount litigation without constituting a prohibited personal use, but a candidate's surplus funds may not be used for this purpose. However, a candidate may transfer surplus funds to a political party for the party's use in financing a recount or recount litigation. "Surplus funds" are defined by RCW 42.17A.005(46) as the balance of contributions that remain in the possession or control of a committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred with respect to that election. The use of surplus funds is governed under RCW 42.17A.430.

Neither the personal use prohibition at RCW 42.17A.445 nor the relevant rule explicitly provides for recounts or recount litigation as an allowable use of campaign funds that is directly related to a candidate's campaign. Neither do they provide other examples or parameters for acceptable post-election campaign expenses. The guidance approved by the Commission at its September 27, 2012 meeting concerning recounts or recount litigation was not subsequently formalized in a rule or interpretative statement.

### **Requirements of Other Jurisdictions**

Like Washington law, the Seattle Municipal Code allows campaign contributions to be transferred or expended to an individual for "election campaign and post-election campaign related expenses." Unlike Washington law, the Seattle Municipal Code (SMC) requires that a campaign dispose of its surplus funds in one of the ways provided by the code by no later than the 30<sup>th</sup> day of April in the year following the date of the election (or for special elections, the 30<sup>th</sup> day of the fifth month following the date of the election). The SMC does not include a definition of "surplus funds," but generally provides for the disposal and reporting of campaign funds that remain after paying all election and post-election

expenses. Copies of SMC 2.04.375 and Elections Code Rule 11 are enclosed with this memo.

In preparing this memo, PDC staff consulted with Polly Grow of the staff of the Seattle Ethics and Elections Commission (SEEC). Polly stated that SEEC would likely view expenses from a candidate's campaign account for a recount or recount litigation as allowable post-election campaign expenses. She stated further that if a candidate were involved in recount litigation beyond the five-month deadline for the disposal of surplus funds, SEEC would consider whether the funds used for that litigation were "surplus funds." If not, they could conclude that the funds were not yet subject to the deadline.

### **Review**

Staff believes the background and resources discussed above tee up several questions for Commission to consider:

1. Does the Commission wish to review its prior conclusion that recounts and recount litigation are an acceptable use of a candidate's active campaign funds?
2. If the Commission believes this conclusion from 2012 is still valid, is there a need to formalize it through rulemaking or an interpretive statement?
3. Beyond the issue of recounts and recount litigation, is there a need for additional parameters for acceptable post-election expenses from a candidate or political committee's campaign funds? Or does the Commission believe the personal use prohibition in RCW 42.17A.445 and the standards set forth in WAC 390-16-238 offer sufficient guidance?
4. Given the Commission's prior conclusion that expenses for recounts and recount litigation may be incurred in a postelection period and paid from active campaign funds, but surplus funds may not be used for this same purpose, does the Commission see a need to clarify when active campaign funds become surplus funds? Or does the Commission believe that the application of "surplus funds" as defined by RCW 42.17A.005(46) is clear?
5. Does the Commission see a need for a cutoff date for the disposal of surplus funds, similar to the City of Seattle? If so, does the Commission want to add this to the list of possible topics for agency request legislation?

Other possible questions:

6. Does the Commission believe losing primary election candidates should be allowed to conduct additional fundraising against primary limits beyond the primary election date, in order to fund a recount or recount litigation? If so, does the Commission want to add this to the list of possible topics for agency request legislation? (Note: Staff does not have information indicating that primary election recounts or related litigation are common expenses for candidates bound by the limits of RCW 42.17A.405.)

If the Commission directs staff to begin the review process, staff will present options for the Commission's consideration at a future meeting.

### **Enclosures**

- *Legal Defense Funds Work Group Report*
- *October 2, 2012 PDC Letter and Memo of Guidance to Rob Maguire*
- *RCW 42.17A.405 – Limits specified – Exemptions*
- *WAC 390-17-302 – Contributions after the primary election*
- *WAC 390-17-300 – Contribution designation for primary and general election*
- *WAC 390-16-230 – Surplus campaign funds – Use in future*
- *RCW 42.17A.445 – Personal use of contributions – When permitted*
- *WAC 390-16-238 – Personal use of contributions – Standard*
- *RCW 42.17A.005(Excerpt) – Definition – Surplus Funds*
- *RCW 42.17A.430 – Disposal of surplus funds*
- *SMC 2.04.375 – Reporting and disposition of campaign funds after election*
- *Seattle Elections Code Rule 11*



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TO: Members, Public Disclosure Commission  
FROM: Nancy Krier, General Counsel  
DATE: August 18, 2011  
SUBJECT: *Legal Defense Funds Work Group Report* – August 25, 2011 Meeting

**Background**

In 2009, the Commission had preliminary discussions concerning “legal defense funds.” These funds are often described as a separate account established by a candidate or public official to defray attorney’s fees and other legal costs incurred by the candidate or official’s legal defense if the candidate or official becomes subject to civil, criminal or administrative proceedings during a campaign, in an electoral context or in the performance of a public official’s duties. These funds are typically separate from campaign accounts, surplus campaign fund accounts, accounts within a public agency for officeholder expenses, or other accounts.

You may recall that many states, some local jurisdictions, and the federal government have specific laws and rules governing legal defense funds, including disclosure requirements. Washington does not have comparable specific statutory provisions. However, in Washington, a discussion concerning legal defense funds involves consideration of campaign finance laws, ethics laws (particularly provisions concerning receipt of gifts), and other sources.

In May 2010, the Commission again discussed the topic. In August 2010, the Commission held a roundtable discussion with representatives from the Executive Ethics Board, the Legislative Ethics Board and the Commission on Judicial Conduct. Subsequently, staff from these boards and commissions met in 2011 to further research the subject, including but not limited to reviewing experiences, laws and rules in other jurisdictions, as well as current Washington laws and rules.

The staff work group prepared a summary of its research and preliminary staff recommendations in a report titled *Legal Defense Funds Work Group Report*. The report will be provided to each board/commission that had staff participating in the research project. Each board/commission can then decide steps to moving the discussion forward, if any, after it reviews the report.

**Agenda Item**

For the PDC, the report is scheduled to be discussed at the August 25, 2011 Commission meeting as part of the 2012 possible agency request legislation agenda item. The report’s Executive Summary is attached to this memorandum, and a copy of the full report is also enclosed.

Enclosures: *Legal Defense Funds Work Group Report* Executive Summary (attached)  
*Legal Defense Funds Work Group Report* (enclosed)



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## Executive Summary

A “**legal defense fund**” is often described as a separate account established by a candidate or public official to defray attorney’s fees and other legal costs incurred by the candidate or official’s legal defense if the candidate or official becomes subject to civil, criminal or administrative proceedings during a campaign, in an electoral context or in the performance of a public official’s duties. These accounts are separate from campaign accounts, surplus campaign fund accounts, accounts within a public agency for officeholder expenses, or other accounts.

The federal government and several states adopted laws or rules governing such funds. Provisions often include disclosure requirements, restrictions on who can contribute, restrictions on uses for excess funds, and limits on what types of litigation may result in the creation of the fund. In December 2008, the Center for Governmental Studies issued a *Model Law on Payments Influencing Candidates and Elected Officials*. The Model Law provided examples of statutory language that could govern legal defense funds.

Washington has a long history of providing transparency about candidates and public officials, and in avoiding conflicts of interest by decision-makers. In Washington, candidates are subject to the campaign finance and disclosure provisions of RCW 42.17. State public officials are subject to the ethics provisions in RCW 42.52 and/or the Code of Judicial Conduct (for judges). Persons conducting quasi-judicial proceedings are subject to the appearance of fairness doctrine. However, in contrast to provisions in other jurisdictions, the Washington statutes currently do not use the phrase or otherwise specifically identify legal defense funds. The same is true with the Code of Judicial Conduct. (It is possible that such funds could be considered a “gift” as discussed below.)

In August 2010, the Washington State Public Disclosure Commission invited representatives of the Washington State Legislative Ethics Board, the Washington State Executive Ethics Board and the Washington State Commission on Judicial Conduct to participate in a roundtable discussion on legal defense funds. As a result, a Legal Defense Funds Work Group of those agencies’ staff was created. The Work Group met during 2011 to research the subject of legal defense funds and possibly to provide some recommendations. The Work Group’s work is summarized in this *Legal Defense Funds Work Group Report*. This report will be presented to each board and commission participating in this research effort. This report reflects staff’s work only. This report does not represent the views or positions of any member of the PDC, LEB, EEB or CJC, or a collective position of any of those commissions or boards, unless the report is formally adopted in whole or in part respectively by those boards or commissions.

### **Preliminary Staff Recommendations:**

- The Work Group determined that the public would be interested in requiring disclosure of the identity and contribution amount of persons donating to a public official’s or candidate’s separate legal defense fund, if such funds are created.**
- The Work Group concluded that depending upon the facts, under current law a donation to a separate legal defense fund of a state official subject to RCW 42.52 could be considered a “gift.”**



# Legal Defense Funds Work Group Report



A Joint Research Project of Staff of the  
Washington State Public Disclosure Commission,  
Washington State Legislative Ethics Board,  
Washington State Executive Ethics Board, and  
Washington State Commission on Judicial Conduct

August 18, 2011

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# Table of Contents

|                                      | Page |
|--------------------------------------|------|
| Executive Summary.....               | 3    |
| Work Group Participants.....         | 4    |
| Work Group Meetings.....             | 4    |
| Research Materials.....              | 4    |
| Summary of Research.....             | 4    |
| Points of Discussion.....            | 12   |
| Preliminary Recommendations.....     | 14   |
| Opportunities for Further Study..... | 14   |
| Endnotes.....                        | 15   |
| Appendices.....                      | 17   |

*Work Group Report Compiled by  
Nancy Krier, General Counsel, Washington State Public Disclosure Commission*



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## Executive Summary

A “**legal defense fund**” is often described as a separate account established by a candidate or public official to defray attorney’s fees and other legal costs incurred by the candidate or official’s legal defense if the candidate or official becomes subject to civil, criminal or administrative proceedings during a campaign, in an electoral context or in the performance of a public official’s duties. These accounts are separate from campaign accounts, surplus campaign fund accounts, accounts within a public agency for officeholder expenses, or other accounts.

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Washington has a long history of providing transparency about candidates and public officials, and in avoiding conflicts of interest by decision-makers. In Washington, candidates are subject to the campaign finance and disclosure provisions of RCW 42.17. State public officials are subject to the ethics provisions in RCW 42.52 and/or the Code of Judicial Conduct (for judges). Persons conducting quasi-judicial proceedings are subject to the appearance of fairness doctrine. However, in contrast to provisions in other jurisdictions, the Washington statutes currently do not use the phrase or otherwise specifically identify legal defense funds. The same is true with the Code of Judicial Conduct. (It is possible that such funds could be considered a “gift” as discussed below.)

In August 2010, the Washington State Public Disclosure Commission invited representatives of the Washington State Legislative Ethics Board, the Washington State Executive Ethics Board and the Washington State Commission on Judicial Conduct to participate in a roundtable discussion on legal defense funds. As a result, a Legal Defense Funds Work Group of those agencies’ staff was created. The Work Group met during 2011 to research the subject of legal defense funds and possibly to provide some recommendations. The Work Group’s work is summarized in this *Legal Defense Funds Work Group Report*. This report will be presented to each board and commission participating in this research effort. This report reflects staff’s work only. This report does not represent the views or positions of any member of the PDC, LEB, EEB or CJC, or a collective position of any of those commissions or boards, unless the report is formally adopted in whole or in part respectively by those boards or commissions.

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## Work Group Participants

Nancy Krier, General Counsel, Washington State Public Disclosure Commission  
Reiko Callner, Executive Director, Washington State Commission on Judicial Conduct  
Mike O'Connell, Executive Director, Washington State Legislative Ethics Board  
Melanie deLeon, Executive Director, Washington State Executive Ethics Board

### Staff Assistance:

Lori Anderson, Communications and Training Officer, Washington State Public Disclosure Commission  
Jana Greer, Confidential Secretary, Washington State Public Disclosure Commission

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## Work Group Meetings

The Work Group met in 2011 on January 31, February 28, May 9, June 13, and July 26.

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## Research Materials

The Work Group reviewed materials from the federal government, other states and jurisdictions, judicial organizations, Washington State, and from other publications.

Those research materials are listed in Appendix A.

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## Summary of Research

This research summary first addresses other jurisdictions (including the judiciary) and the Model Law, followed by a summary of current Washington laws governing candidates and state officials. The Work Group's research concerned legal defense funds that may be established by or on behalf of state public officials or candidates. There may also be local ordinances or other ethics provisions governing local officials that may be appropriate for future review or study.

### Federal Government

The federal government has legal defense funds for officeholders, and has provided guidance for federal candidates. Congress and federal agencies have recognized that creation of a legal defense fund implicates both campaign laws for candidates and ethics rules.

Thus, the Federal Election Commission and the U.S. House and U.S. Senate ethics rules allow for the creation and funding of separate legal defense funds if several steps are taken.

- **FEC:** Legal expenses are reviewed on a case-by-case basis to determine if they are for prohibited personal use. Under federal provisions surplus campaign funds can be used for office-holder expenses or "any other lawful

purpose.” Because a legal defense fund is separate from a candidate’s campaign committee fund, contributors who have given the maximum amount to a campaign can still contribute to a legal defense fund. Political committees that make donations to a legal defense fund trust must disclose them on the reports they file with FEC. See *generally*, 2 U.S.C. §§ 431(9) and 439a; 11 C.F.R. § 113, FEC Advisory Opinions.

- **Congress:** Congressional ethics rules require disclosure of legal defense funds, appointment of a trustee, limits on amounts contributed (\$5,000 per year for the U.S. House; \$10,000 per year for the U.S. Senate), and other provisions. The fund must be approved by the respective body’s ethics committee. All the funds must be used to pay only for investigative, civil, criminal or other legal proceedings relating to an officeholder’s election to office, official duties while in office and administrative or fundraising expenses of the trust. Both houses prohibit contributions from lobbyists and foreign nationals. See, *generally*, Office of the Clerk of the U.S. House of Representatives website at [http://clerk.house.gov/public\\_disc/legal.aspx](http://clerk.house.gov/public_disc/legal.aspx) and Public Citizen website at [http://www.cleanupwashington.org/lobbying/page.cfm?pageid=45#\\_edn1](http://www.cleanupwashington.org/lobbying/page.cfm?pageid=45#_edn1).<sup>1</sup>
- **Executive Branch:** The Office of Government Ethics has addressed the issue of legal defense funds for federal officeholders through an informal advisory letter. Each executive agency is authorized to develop their own policies regarding such funds, though the agencies usually defer to OGE guidelines. See, *generally*, Public Citizen website at [www.cleanupwashington.org](http://www.cleanupwashington.org).

### **Other Jurisdictions - Examples**

Several states enacted legislation governing legal defense funds of candidates and officeholders. Examples include New Jersey, Michigan, California, and North Carolina. San Diego is an example of a local jurisdiction that has addressed legal defense funds.

Elements of those provisions in these jurisdictions include, for example:

- **New Jersey:** New Jersey permits campaign contributions to be used for “reasonable fees and expenses of legal representation, the need for which arises directly from and is related to the campaign for public office or the ordinary and necessary duties of holding public office.” Examples include defense of defamation action against the candidate or officeholder, and defense of a civil action or administrative proceeding alleging a violation of the campaign finance act or ethics law. Funds cannot be used for defense of a candidate or officeholder who is the subject of a criminal investigation or is a criminal defendant, or for “personal use.” The rules are implemented by the New Jersey Election Law Commission. N.J. Admin. Code §§ 19:25-6.10.
- **Michigan:** Michigan’s “Legal Defense Fund Act” adopted in 2008 requires disclosure of contributions and expenditures made to assist elected and appointed officials in defending themselves against a criminal, civil or administrative action arising directly out of the conduct of the elected official’s governmental duties. It also requires registration and disclosure forms to be filed



with the Bureau of Elections (see form at Appendix B), prohibits anonymous contributions, and provides other requirements. Mich. Pub. Act 288 of 2008.

- **California:** In California, state candidates and officeholders may establish a legal defense fund to defray attorneys' fees and other related legal costs incurred for the candidate or officeholder's legal defense if the candidate or officeholder is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officeholder's governmental activities and duties. A separate bank account and committee must be established, and registration and disclosure forms must be filed with the Fair Political Practices Commission. Contributions to the funds are not subject to campaign contribution limits. However, funds may be only raised in an amount reasonably calculated to pay attorneys' fees and other legal costs related to the defense of the candidate or officeholder. Similar provisions govern local candidates and officers. Cal. Code Regs. Title 2, §§ 18530.45 and 18530.4.
- **North Carolina:** North Carolina law provides that candidates and elected officers are entitled to establish a separate fund for the purpose of funding an existing or potential legal action taken by or against the elected officer in the elected officer's capacity. The fund is defined as any collection of money for the purpose of funding a legal action, or potential legal action, taken by or against an elected officer in that elected officer's official capacity, including resulting from a campaign. The fund must be registered and is subject to disclosure unless the fund receives money only from the candidate or the candidate's relatives. Additionally, a treasurer must be appointed, detailed accounts must be filed, and other requirements apply. N.C. Gen. Stat. Chap. 163 Article 22M § 163-278.300 *et seq.*
- **San Diego:** San Diego adopted a local ordinance that permits every elected city official and every candidate for elective city office to establish and maintain a legal defense fund. The fund may only be used to defray professional fees and costs associated with an audit conducted by the ethics or campaign finance agencies, or for fees and costs for civil, criminal or administrative proceedings arising out of the conduct of a campaign, the electoral process, or the performance of a city official's governmental duties. The fund cannot be used to pay fines, sanctions or penalties. The fund must be maintained through a committee. Registration and disclosure requirements apply. Contributions are limited to \$250 per calendar year for each audit or legal proceeding. Other requirements apply. San Diego Municipal Code §§ 27.2965 – 27.2969.

Attached at Appendix C are examples of situations or cases in other jurisdictions that have involved legal defense funds.

### **Judiciary – Examples from Other Jurisdictions**

Judges are subject to codes of conduct adopted by the courts in their jurisdictions. Those codes typically address conflicts of interest and provide rules for other matters that may call into question the impartiality of the judge, including the receipt of gifts.



Sometimes, the judicial ethics advisory bodies analyzing those judicial codes have been asked to provide formal advisory opinions explaining the application of their codes to the creation of legal defense funds for or by judges. Examples include the following.

- **Florida:** The Florida Judicial Ethics Advisory Committee determined in 1998 that a judge may maintain and establish a fund to defend against charges of unethical behavior by the Judicial Qualifications Commission, so long as certain conditions and limitations were adhered to. Florida Judicial Ethics Advisory Committee Opinion No. 98011 (July 7, 1998).
- **Illinois:** The Illinois Judges Association determined in 1997 that among other things, contributions to a judicial defense fund established for a judge charged with a criminal offense constitute gifts to the judge, and therefore were subject to the judicial conduct rules governing gifts. Illinois Judges Association Advisory Opinion No. 97-14 (July 9, 1997).
- **Federal Courts:** A third example is an opinion apparently issued to a federal judge on the Ninth Circuit Court of Appeals concerning his legal defense fund. The fund was created to finance his defense concerning any claims against him as a judge or that may arise out of his former employment. The judge's legal defense fund website states that the fund is "formed in compliance with applicable law," and describes "It has been structured and the Trustees are required to operate it in compliance with all applicable laws, regulations and codes of ethics, including the Code of Conduct for United States Judges, as interpreted by an opinion dated May 8, 2009 from the Committee on Codes of Conduct of the Judicial Conference of the United States." However, the Work Group was unable to obtain a copy of the opinion for further study. Website at [www.bybee.org](http://www.bybee.org).

## **Model Law**

A 2008 Model Law by the Center for Governmental Studies (*Model Law on Payments Influencing Candidates and Elected Officials*) also provides language for states to consider if they wish to address legal defense funds in statute. Among many other provisions, it offers findings indicating concerns about raising funds outside the campaign finance disclosure system, an intent section providing that such funds that will potentially benefit candidates or officeholders should be disclosed, definitions, and other provisions governing legal defense funds including when and how they can be created, and how they are disclosed. Model Law available at <http://www.cgs.org>.

## **Washington State**

In Washington, candidates are subject to the campaign finance and disclosure provisions of RCW 42.17. State public officials and employees are subject to the ethics provisions in RCW 42.52 and/or the Code of Judicial Conduct (for judges). These Washington statutes and the Code currently do not use the phrase "legal defense fund."

However, these Washington laws and the Code of Judicial Conduct contain strong statements expressing the public interest in maintaining the integrity of public officials and provide for disclosure of the financial affairs of candidates and state public officials. The



statutes and Code describe the public interest in avoiding conflicts of interest by these persons due to their receipt of gifts or financial entanglements with those they serve, govern or regulate. Similar conflict of interest concerns are acknowledged in the state's "appearance of fairness doctrine" that applies to persons in administrative agencies who conduct quasi-judicial proceedings.

In addition, Washington has a long and strong interest in disclosure of information that may reveal potential conflicts of interest. The State has also enacted restrictions on financial support of and gifts to state public officials when the sources of such funding are not their public employer.

- **RCW 42.17**

RCW 42.17 is the "Disclosure – Campaign Finance – Lobbying Act." RCW 42.17 is enforced by the PDC. RCW 42.17.010 provides in part that:

It is hereby declared by the sovereign people to be the public policy of the state of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings.

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interest.

(4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means.

(6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.

...

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

Under RCW 42.17, campaign contributions and expenditures are disclosed to the public on reports regularly filed with the PDC. Contributions to a campaign are to be used for campaign purposes only and not for the personal use of a candidate, with limited exceptions. RCW 42.17.125. A candidate is authorized to have only one campaign committee that raises and spends money on the campaign for the purpose of supporting the candidate. RCW 42.17.050(3).



A campaign "contribution" is defined at RCW 42.17.020(15)(a) in part as:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents; ...

RCW 42.17.020(15)(b) provides a list of what is not considered a contribution.<sup>2</sup> Under this statute, certain legal services provided to a candidate's campaign are not considered contributions. RCW 42.17.095 lists the permissible uses for surplus campaign funds and "legal defense funds" is not on the list; "non-reimbursed public office expenses" is listed. WAC 390-24-032 defines a non-reimbursed public office expense as "an expenditure incurred by an elected or appointed official, or a member of his or her family, solely because of being an official."

RCW 42.17 also requires candidates, elected officials, and executive state officers to file a personal financial affairs disclosure report (F-1 form) disclosing certain income, asset and gift information. RCW 42.17.240, RCW 42.17.241, RCW 42.17.2401.<sup>3</sup>

The phrase "legal defense funds" is not used in RCW 42.17. However, somewhat related inquiries or situations have been addressed by the PDC or its staff on a case-by-case basis, considering the statutes in effect at that time and under the specific facts presented. For example:

- **1979:** Under a former statute governing uses of office-related funds, a settlement was reached with a county official and through the Attorney General's Office where the names of contributors to the official's legal defense fund would be disclosed. The official was being sued after he refused to release certain tax information under the Public Records Act.
- **1992:** The PDC determined that a former state senator could not use his surplus campaign funds to help settle a sexual harassment lawsuit brought by a former aide because the settlement costs were not "non-reimbursed public office-related expenses."
- **1999:** PDC staff advised a city councilman that donations to his legal defense fund were not reportable to the PDC. He had established the fund to pay legal costs associated with a slander accusation from a former city councilmember. However, he was also informed by PDC staff that the funds would be reportable if they were intended to be used for, or are used for, an election campaign, or under any of the purposes triggering reporting a personal financial affairs report (F-1).

Currently, and pending further direction from the Commission or a change in law, PDC staff will advise state public officials and candidates subject to RCW 42.17 that they can create a separate legal defense fund (separate from their campaign fund) that is not reportable to the



PDC if it is not used to support or oppose a campaign, however: (1) they cannot use campaign contributions or surplus campaign contributions for the fund; (2) legal defense funds are not subject to contribution limits and are not reportable on campaign finance disclosure reports, but will need to be disclosed on the F-1 if reported as income to the Internal Revenue Service and if the reporting threshold is met; and (3) they may be subject to gift restrictions in RCW 42.52 and the person inquiring should check with the relevant board or commission enforcing that law.

- **RCW 42.52**

RCW 42.52 is the Ethics in Public Service Act. It is enforced by the LEB, EEB and to a more limited extent, the CJC (see discussion of Code of Judicial Conduct, next section). The Ethics Act applies to state officials. The intent section at RCW 42.52.020 provides:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

The Ethics Act also restricts receipt of gifts by state officials. For example, RCW 42.52.140 provides:

No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

"Gift" is defined at RCW 42.52.010(10) as "anything of economic value for which no consideration is given." The exceptions from what is considered a "gift" are further described in RCW 42.52.010(10).<sup>4</sup>

The phrase "legal defense funds" is not used in RCW 42.52. Legal defense funds have economic value presumably for which no consideration is given, but they are not specifically listed in RCW 42.52 as an exception to what constitutes a "gift." Therefore, under current law, it appears that in order to be lawfully received, donations to such funds would need to satisfy one of the statutory exceptions from what is a gift, when the recipients are persons subject to RCW 42.52. However, the LEB, EEB and CJC have not been formally asked to determine, in an enforcement setting or otherwise, whether donations to a legal defense fund would constitute a "gift" under RCW 42.52.

- **Code of Judicial Conduct**

The Code of Judicial Conduct governs judicial officers. It is enforced by the CJC when there are allegations of judicial misconduct. The preamble to the Code of Judicial Conduct provides:

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary,



composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Washington State Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through the Commission on Judicial Conduct.

The Code of Judicial Conduct contains canons and rules that govern the judiciary. With respect to receipt of gifts or other things of value, Rule 3.13(A) provides:

A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

However, Rule 3.13(B) provides that unless otherwise prohibited by law, or by paragraph (A), a judge may accept certain gifts that are listed in the rule.<sup>5</sup>

The Code does not use the phrase "legal defense fund." The CJC has not had an enforcement action concerning whether a judge's "legal defense fund" is permissible under the Code. The CJC does not issue advisory opinions interpreting the Code. A committee established by the Supreme Court, the Ethics Advisory Committee, gives advice with respect to the application of the Code to judicial officers. At this time, the Work Group did not locate any Ethics Advisory Committee opinions concerning legal defense funds.

- **The Appearance of Fairness Doctrine**

Just as judges who conduct judicial proceedings are subject to requirements designed to ensure their impartiality and fairness, so, too, are persons in administrative agencies that conduct quasi-judicial proceedings. As described by the Municipal Research and Services Center, the "appearance of fairness doctrine" is a "rule of law requiring government decision-makers to conduct non-court hearings and proceedings in a way that is fair and unbiased in both appearance and fact." Municipal Research and Services Center, *The Appearance of Fairness Doctrine in Washington State*, Report No. 32 (Revised) (April 2011) at 1.

Judicially established in Washington State in 1969, the doctrine requires public hearings that are adjudicatory or quasi-judicial in nature meet two requirements:



hearings must be procedurally fair, and must appear to be conducted by impartial decision-makers.

In 1982, the Washington State Legislature codified the portion of the appearance of fairness doctrine that applies to land use proceedings [RCW 42.56].

*Id.*

MRSC further describes that:

From the earliest Washington cases, our courts have demanded that decision-makers who determine rights between specific parties must act and make decisions in a manner that is free of the suspicion of unfairness. The courts have been concerned with “entangling influences” and “personal interest” which demonstrate bias, and have invalidated local land use decisions because either the hearings appeared unfair or public officials with apparently improper motives failed to disqualify themselves from the decision-making process.

*Id.* at 3.

The MRSC report does not reference any cases or situations specifically concerning “legal defense funds” of a decision-maker who is also participating in a quasi-judicial proceeding. However, to the extent a person participates as a decision-maker in a quasi-judicial proceeding, donations to his or her legal defense fund may raise issues under this doctrine if the contributor to the fund subsequently appears before the officeholder in such a proceeding.

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## Points of Discussion

The Work Group reviewed the research materials referenced herein. The Work Group also discussed the following points:

- Many high-profile situations in various jurisdictions have led to the need for the creation of procedures governing legal defense funds, including but not limited to the need for the disclosure of such funds. Candidates and officeholders in those jurisdictions have created such funds to defend themselves in a variety of legal settings including civil, criminal and administrative.
- In Washington, it appears that few questions have been posed in the past concerning the creation of legal defense funds under current laws or rules, and those have been handled on a case-by-case basis. However, the Work Group recognized (1) the increasingly litigious reality of campaigns and public office service, and that (2) a pro-active approach to providing guidance on legal defense funds is well worth considering.
- The Work Group recognized that in Washington, there are times when a current state official’s request for legal defense at public expense in a civil or administrative matter can be denied. While the analysis in each case is fact-specific, examples can include a denial of defense at public expense in a tort claim matter, or in an ethics board or commission administrative matter.

- The Work Group recognized that under RCW 42.52, donations to a public official's legal expense could be considered a gift depending upon all of the information presented. There could be additional concerns if such donations were proposed to be given, for example, by a lobbyist to a state legislator's legal defense fund.
- The Work Group discussed that in Washington, situations that could prompt a request to the PDC, EEB, LEB or CJC by a state official or candidate concerning his or her interest in creating a separate legal defense fund could include, for example:
  - A current officeholder is administratively charged with an ethics violation, and the State declines to defend him or her at public expense under the ethics procedures.
  - A candidate is sued for sexual harassment, defamation or in some other civil action.
  - A current officeholder is sued for sexual harassment, defamation, or in some other civil matter, and the State declines to defend him or her at public expense under the tort claims procedures.
  - A candidate or current officeholder is criminally charged.
- The Work Group discussed that there are confidentiality provisions governing the judiciary for CJC administrative enforcement proceedings under the Code of Judicial Conduct. Therefore, if a judge sought donations to a legal defense fund that he or she created in order to defend against an ethics charge brought by the CJC, and donations to that fund were required to be public, the confidentiality provisions governing the proceedings overall would need to be considered.
- The Work Group discussed that several policy issues may need to be addressed if legislation or other efforts move forward to specifically govern legal defense funds. For example, should there be provisions for what types of litigation can be funded by a candidate or officeholder having a separate legal defense fund (should criminal matters be included)?
- The Work Group discussed its preliminary recommendations. See next section. The Work Group confirmed that the staff views do not represent the views of any board or commission member, individually or collectively. The Work Group confirmed that the summary of its work would be provided to each board and commission involved in this research project, and each agency would determine any of its next steps. Options could include seeking agency request legislation (for those boards or commissions that engage in that process), or providing other guidance.



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## Preliminary Recommendations

Based upon its research and discussions, the Work Group makes the following recommendations:

- The Work Group determined that the public would be interested in requiring disclosure of the identity and contribution amount of persons donating to a public official's or candidate's separate legal defense fund, if such funds are created.
- The Work Group concluded that depending upon the facts, under current law a donation to a separate legal defense fund of a public official subject to RCW 42.52 could be considered a "gift."

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## Opportunities for Further Study

Attached at Appendix D are questions that appear to have been examined in jurisdictions considering proposals regarding legal defense funds and other questions that may be useful for policymakers to examine in Washington if a legal defense funds provision is being considered to be enacted, or if future guidance is to be provided by the PDC, EEB, LEB or CJC. They include, for example:

- Whether there should be disclosure of separate legal defense funds and if so how and when;
- Whether or when donations to such funds are considered campaign contributions or gifts;
- What types of litigation involving candidates or officeholders can be funded through an authorized separate legal defense fund; and,
- Other questions.

In addition, ethics laws, rules, policies or ordinances concerning local officials may also be an opportunity for future study.

# Endnotes

<sup>1</sup> Public Citizen also cites to the following authorities describing Congressional legal defense fund provisions: House Committee on Standards of Official Conduct, Memorandum to All Members, Officers, and Employees, "Legal Expense Fund Regulations," House Rule 26 (June 10, 1996). The House Rule on Legal Expense Funds has since been renumbered to Rule XXV(5)(c)(3). U.S. Senate Select Committee on Ethics, "Regulations of Trust Funds to Defray legal Expenses Incurred by Members, Officers, and Employers of the United States Senate, Senate Ethics Manual (Aug. 10, 1988). Office of Government Ethics, Letter to an Alternate Designated Agency Ethics Official (Aug. 30, 1993).

<sup>2</sup> RCW 42.17.020(15)(b) provides that a campaign contribution does not include:

- (i) Standard interest on money deposited in a political committee's account;
- (ii) Ordinary home hospitality;
- (iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;
- (iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;
- (v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;
- (vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person;
- (vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;
- (viii) Legal or accounting services rendered to or on behalf of:
  - (A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or
  - (B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; or
- (ix) The performance of ministerial functions by a person on behalf of two or more candidates or political committees either as volunteer services defined in (b)(vi) of this subsection or for payment by the candidate or political committee for whom the services are performed as long as:
  - (A) The person performs solely ministerial functions;
  - (B) A person who is paid by two or more candidates or political committees is identified by the candidates and political committees on whose behalf services are performed as part of their respective statements of organization under RCW 42.17.040; and
  - (C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities, or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under (a)(ii) of this subsection.

A person who performs ministerial functions under this subsection (15)(b)(ix) is not considered an agent of the candidate or committee as long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee.

<sup>3</sup> The items to be disclosed on an F-1 personal financial affairs reporting form include, for example, bank or savings accounts in which such person owned a direct financial interest that exceed the reporting threshold; sources of compensation; certain items under RCW 42.52 (payments connected with a speech, presentation, appearance, or trade mission and payment of enrollment, course fees and travel expenses attributable to attending certain seminars); items of value given to spouses, domestic partner and family members; and, other items.



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<sup>4</sup>RCW 42.52.010(1) provides that a "gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17 RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

<sup>5</sup> Under Rule 3.13, the gifts a judge may accept under (B) are:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge.

(9) gifts incident to a public testimonial;

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

# APPENDICES

# APPENDIX A



# Research Materials Reviewed by Work Group

## Materials from the August 26, 2010 PDC Meeting and Roundtable Discussion:

- **PowerPoint Presentation** summarizing:
  - Articles concerning federal officials that had created legal defense funds.
  - A summary of a December 2009 study by the Center for Governmental Studies titled "Loopholes, Tricks and End Runs: Evasions of Campaign Finance Laws and a Model Law to Block Them."
  - A summary of RCW 42.17 (campaign finance, lobbying and personal financial affairs disclosures) and RCW 42.52 (state ethics laws and gift restrictions).
  - Examples of jurisdictions that have addressed legal defense funds (the federal government, California, Nevada, Michigan, North Carolina).
  - Examples of jurisdictions that had recently considered proposed laws governing legal defense funds (Illinois, New Jersey, New York).
  - Examples of questions jurisdictions may consider in designing legal defense funds laws.
  
- **Handouts** including:
  - Summary of PDC enforcement case involving a ballot measure sponsor that created a legal defense fund.
  - *Tacoma News Tribune* article, "Campaign Fund Can't Be Used to Settle Suit" (March 25, 1992), concerning a former state senator and a sexual harassment lawsuit.
  - PDC meeting minutes concerning a 1979 creation of a legal defense fund by a county official and the disclosure of the contributors per settlement agreement.
  - *Anchorage Daily News* article concerning the legal defense fund created by former Alaska Governor Sarah Palin, "Palin to Refund Most of Defense Fund Money" (June 25, 2010).
  - California Fair Political Practices Commission rule regarding legal defense funds of state candidates and officers (Cal. Code Regs. Title 2, § 185340.4).
  - Federal Election Commission news release regarding a federal candidate's legal defense fund, "FEC Issues Advisory Opinion on Visclosky Request" (June 19, 2009).
  - *Seattle Post-Intelligencer* article concerning a federal office-holder, "McDermott Must Pay \$1 Million in Leak Case" (April 1, 2008).
  - January 18, 1999 Letter from PDC staff to a Kennewick City Councilmember describing that his legal defense fund donations are not reportable to the PDC under RCW 42.17 unless they are or are intended to be used for any election campaign, or any of the purposes that trigger



reporting on a personal financial affairs report (F-1 report) filed with the PDC.

### **Other Washington State Materials**

- Proposed Senate Bill 5010 (2011 Regular Session) that concerned public funding of State Supreme Court campaigns and described that nothing in the proposed legislation would prevent a publicly financed candidate from having a “legal defense fund.”
- August 14, 2008 PDC staff letter to a ballot measure sponsor confirming that funds he is receiving for legal expenses will not be used directly or indirectly to support any candidate, ballot measure or initiative to the legislature.
- November 2, 2010 PDC staff chart summary of responding to questions concerning funding election recount efforts and creating legal defense funds.
- *State v. Conte*, 159 Wn.2d 797, 154 P.3d 194 (2007).
- *State v. Sanders*, 166 Wn.2d 164, 207 P.3d 1245 (2009); 139 Wn.App. 200, 159 P.3d 479 (2007).
- *Human Life of Washington v. Brumsickle et al.*, 624 F.3d 1990 (9<sup>th</sup> Cir. 2010).
- Legislative Ethics Board Reasonable Cause Determination – Stipulation and Order, Complaint No. 2007-01, *In Re Hankins*, Special Privileges – Use of Public Resources (November 2007).
- February 28, 1998 memorandum from Kathleen D. Mix, Chief Deputy Attorney General, to Governor’s Executive Cabinet and Other Interested Agencies, titled “Representation by the AGO Before Executive Ethics Board.”
- AGO Policy III.17 – *Requests for Defense Under Tort Claims Statute*.
- Municipal Research and Services Center, *The Appearance of Fairness Doctrine in Washington State*, Report No. 32 (Revised) (April 2011).

### **Other Materials Concerning Legal Defense Funds for Federal Officeholders or Federal Candidates**

- *Politico* articles, “Rangel Starts Legal Defense Fund” (December 28, 2010), “Waters Opens Legal Defense Fund” (September 3, 2010).
- *The Hill* article, “Rep. Waters Forms Legal Defense Fund to Wage Fight Against Ethics Charges” (September 3, 2010).
- Article posted on [www.cleanupwashington.org](http://www.cleanupwashington.org), “Legal Defense Fund Rules for Officials of the Congressional and Executive Branches” (undated article, viewed February 1, 2011).
- Summary of U.S. House of Representatives legal defense fund requirements posted on <http://clerk.house.gov>, “Legal Expense Fund Disclosures” (undated article, viewed February 1, 2011).
- February 7, 2011 Federal Election Commission Advisory Opinion 2000-40 to U.S. Representative Jim McDermott concerning his “Legal Expense Trust” to pay legal expenses in a lawsuit filed against him, and explaining that under federal

statutes and rules, the trust may accept donations from the campaign funds of other House Members, and explaining the disclosure requirements.

- January 5, 2011 Advisory Opinion request (AOR 2011-01) to the Federal Election Commission on behalf of the political committee for U.S. Senate candidate Robin Carnahan asking if a separate legal defense fund could be established to defray the committee's expenses related to a copyright infringement and misappropriation lawsuit filed by Fox News.

## **Other States' and Jurisdictions' Materials Concerning Legal Defense Funds**

- New Jersey:
  - Article posted on <http://blog.nj.com> titled "N.J. Top Court Denies Former State Sen. Wayne Bryant's Campaign Funds Bid" (March 8, 2010).
  - New Jersey Election Law Commission rule, N.J. Admin. Code § 19:25-6.10 (Use of funds for legal fees).
- Michigan:
  - Articles posted on *Free Press* website at [www.freep.com](http://www.freep.com), "Kilpatrick's Legal Defense Fund is Nearly Depleted," "Kilpatrick's Donation Linked to Contractor in Bribe Case" (undated articles, viewed February 1, 2011).
  - Michigan Department of State Bureau of Elections article, "Legal Defense Fund Act FAQs" and "Statement of Organization for Legal Defense Fund" form.
- California:
  - Article in *Los Angeles Times*, posted at <http://articles.latimes.com>, "Legal Defense Funds Restricted" (November 22, 2007).
  - Article in *The Sacramento Bee*, posted at [www.sacbee.com](http://www.sacbee.com), "Perata Shifted \$1.5 Million in Campaign Cash to Legal Defense Fund" (December 12, 2008).
  - Excerpt from California Fair Political Practices Commission *Campaign Manual* dated February 2008, "Legal Defense Funds."
  - California Contribution Limits chart describing that contributions to a legal defense fund are not subject to contribution limits or the voluntary expenditure ceiling, but "a candidate or officeholder may raise, in total, no more than is reasonably necessary to cover attorney's fees and other legal costs related to the proceeding for which the fund is created. (Section 85304, Regulation 18530.4.)"
  - California Fair Political Practices Rules at Cal. Code Regs. Title 2, § 18530.45 (Legal Defense Funds – Local Candidates and Officers) and § 18530.4 (Legal Defense Funds – State Candidates and Officers).
- North Carolina:
  - Article of WRAL news station posted at [www.wral.com](http://www.wral.com), "Ethics Law Opens Hearings, Legal Funds to Scrutiny" (August 4, 2007).
  - Article posted at *Carolina Journal Online* at [www.carolinajournal.com](http://www.carolinajournal.com), "Former Sen. Swindell Sets Up Legal Defense Fund – Current and Former



Democratic Lawmakers Contribute to Fight Defamation Suit” (January 26, 2011).

- Excerpt from North Carolina State Board of Elections *2010 Campaign Finance Manual* description of “Legal Expense Funds” for candidates.
- North Carolina General Statutes Chap. 163 Article 22M § 163-278.300 et seq. (Legal Expense Funds).
- Arizona:
  - Article in *The Arizona Republic* posted at [www.azcentral.com](http://www.azcentral.com), “Arizona Lacks Disclosure Rules for Officials’ Defense Funds” (August 18, 2010).
- Alaska:
  - Article in *The Olympian* posted at [www.theolympian.com](http://www.theolympian.com), “Alaska Rep. Young Still Raising Money for Legal Defense Fund” (May 4, 2011).
- San Diego:
  - Article posted at [www.voiceofsandiego.org](http://www.voiceofsandiego.org), “Hueso First to Use Fund for Ethics Investigation” (January 25, 2008).
  - The City of San Diego Ethics Commission’s “Fact Sheet on Legal Defense Funds” (revised January 6, 2006).

### **Materials Concerning Legal Defense Funds of Judges – Other Jurisdictions**

- Article in *The New York Law Journal* posted at [www.law.com](http://www.law.com), “Spargo Is Sentenced to 27 Months in Jail for Attempted Bribery” (December 22, 2009).
- Illinois Judges Association Ethics Opinion No. 97-14 posted at [www.ija.org](http://www.ija.org) on the topic of “Formation of Legal Defense Fund on Behalf of Judge” (July 9, 1997).
- Florida Supreme Court Judicial Ethics Advisory Committee Opinion No. 98-11 posted at [www.jud6.org](http://www.jud6.org) on topic of “Judge Establishing and Maintaining a Defense Fund to Defend Against Charges of Unethical Behavior Brought by the Judicial Qualifications Commission” (July 7, 1998).
- Website of “Bybee Legal Expense Fund” at [www.bybeefund.org](http://www.bybeefund.org), enabling persons to contribute to “help Judge Jay S. Bybee pay costs and expenses he is incurring or may incur in connection with claims, investigations or proceedings relating to his service as Assistant Attorney General for the Office of Legal Counsel in the U.S. Department of Justice or his service on the U.S. Court of Appeals for the Ninth Circuit.” (Website visited February 1, 2011).

### **Other Publications Concerning Legal Defense Funds**

- *Model Law on Payments Influencing Candidates and Elected Officials*, Center for Governmental Studies (December 2008). Copy available at [www.cgs.org](http://www.cgs.org).

# APPENDIX B



**ORIGINAL OR AMENDED  
STATEMENT OF ORGANIZATION FORM FOR LEGAL DEFENSE FUND**

1. Legal Defense Fund ID #:

2. Type of Filing:  Original Filing       Amendment: Items: \_\_\_\_\_ Eff. Date: \_\_\_\_\_

3. Full Name of Legal Defense Fund: (Must include Official's first and last name and the words "Legal Defense Fund")

4. Public Official Full Name (Last, First, M.I.):

5a. Office (Check one):

- |   |   |  |  |   |
|---|---|--|--|---|
| <input type="checkbox"/> Governor         | <input type="checkbox"/> State Senator    | <input type="checkbox"/> MSU Trustee   | <input type="checkbox"/> Circuit Court   | <input type="checkbox"/> Local or Other please specify: _____ |
| <input type="checkbox"/> Lt. Governor     | <input type="checkbox"/> State Rep.       | <input type="checkbox"/> WSU Gov.      | <input type="checkbox"/> District Court  |   |
| <input type="checkbox"/> Sec. of State    | <input type="checkbox"/> State Bd. of Ed. | <input type="checkbox"/> Supreme Court | <input type="checkbox"/> Probate Court   |   |
| <input type="checkbox"/> Attorney General | <input type="checkbox"/> UofM Reg.        | <input type="checkbox"/> Appeals Court | <input type="checkbox"/> Municipal Court |   |

5b. District/Circuit # or Jurisdiction: \_\_\_\_\_

6. A description of the criminal, civil or administrative action at issue:

7. Date of Initial Contribution/Expenditure: \_\_\_\_/\_\_\_\_/\_\_\_\_

8a. Complete Mailing Address (May be PO Box):

8b. Complete Street Address (May not be PO Box):

8c. Legal Defense Fund Phone #: \_\_\_\_\_

8d. Legal Defense Fund Fax #: \_\_\_\_\_

8e. Legal Defense Fund E-mail Address: \_\_\_\_\_

8f. Legal Defense Fund Web Address: \_\_\_\_\_

9a. Treasurer Name and Complete Street Address:

9b. Treasurer Phone #: \_\_\_\_\_

9c. Treasurer E-mail Address: \_\_\_\_\_

10. Designated Recordkeeper Name:

11. Name and Address of Depository or Intended Depository of Legal Defense Fund funds. (Michigan Bank, Credit Union or Savings & Loan Association)

12. Verification: I/We certify that all reasonable diligence was used in the preparation of the above statement and that the contents are true, accurate and complete to the best of my/our knowledge or belief.

Public Official Signature: \_\_\_\_\_ /\_\_\_\_\_/\_\_\_\_\_  
Date

Current Treasurer Signature: \_\_\_\_\_ /\_\_\_\_\_/\_\_\_\_\_  
Date





MICHIGAN DEPARTMENT OF STATE  
BUREAU OF ELECTIONS

**LEGAL DEFENSE FUND  
COVER PAGE**

Report must be legible, typed or printed in ink and signed by the Treasurer/Designated Record Keeper and Official.

FOR OFFICIAL USE ONLY

|   |  |
|---|--|
| <p>1a. Legal Defense Fund I.D. Number: _____</p> <p>1b. Legal Defense Fund Name:</p> <p>1c. Legal Defense Fund Address:</p> <p>1d. Legal Defense Fund Phone: _____</p>  | <p>2a. Official's Full Name:</p> <p>2b. Official's Office:</p>   |
| <p>3a. Treasurer's Full Name:</p> <p>3b. Treasurer's Residential Address:</p>   | <p>3c. Treasurer's Business Address:</p> <p>3d. Treasurer's Phone Number(s): _____</p>   |
| <p>4a. Quarterly Transaction Report Covering:</p> <p><input type="checkbox"/> January 1 – March 31; Due: April 25th</p> <p><input type="checkbox"/> April 1 – June 30; Due: July 25<sup>th</sup></p> <p><input type="checkbox"/> July 1 – September 30; Due: October 25th</p> <p><input type="checkbox"/> October 1 – December 31; Due: January 25th</p> <p>4b. <input type="checkbox"/> Amendment to Transaction Report: also mark (4a) to indicate which Report is being amended)</p> | <p>5. <input type="checkbox"/> Dissolution of Legal Defense Fund:</p> <p style="text-align: center;">Effective Date of Dissolution</p> <p style="text-align: center;">_____/_____/_____</p> <p>By checking this item, I/We certify that the Legal Defense Fund has no assets or outstanding debts, including late filing fees. Note: The disposition of residual funds must be reported on Itemized Expenditure Schedule 2 and the Summary Page.</p> |
| <p>6. Verification: I/We certify that all reasonable diligence was used in the preparation of this statement and attached schedules (if any) and to the best of my/our knowledge and belief the contents are true, accurate and complete.</p>   |  |
| <p>Official's Signature and Date: _____ / / _____</p>   |  |
| <p>Treasurer's/Designated Record Keeper's Signature and Date: _____ / / _____</p>   |  |



MICHIGAN DEPARTMENT OF STATE  
BUREAU OF ELECTIONS

LEGAL DEFENSE FUND  
SUMMARY PAGE

FOR OFFICIAL USE ONLY

Summary Page

|   | Column I<br>This Period | Column II<br>Cumulative Calendar Year |
|---|-------------------------|---------------------------------------|
| 1. Contributions  | 1a. \$ _____            | 1b. \$ _____                          |
| 2. In-Kind Contributions  | 2a. \$ _____            | 2b. \$ _____                          |
| 3. TOTAL CONTRIBUTIONS  | 3a. \$ _____            | 3b. \$ _____                          |
| 4. Itemized Expenditures  | 4a. \$ _____            |                                       |
| 5. Unitemized Expenditures (less than \$50.01 each - no Schedule) | 5a. \$ _____            |                                       |
| 6. TOTAL EXPENDITURES   | 6a. \$ _____            | 6b. \$ _____                          |

BALANCE STATEMENT

|  |                |
|--|----------------|
| 7. Ending Balance of last report filed<br>(Enter zero if no previous reports have been filed.) | 7. \$ _____    |
| 8. Amount received during reporting period (Item 1a.)  | 8. \$ _____    |
| 9. SUBTOTAL Add lines 7 and 8  | 9. \$ _____    |
| 10. Amount expended during reporting period (Item 6a.)   | 10. \$ _____   |
| 11. ENDING BALANCE<br>(Subtract line 10 from line 9)   | 11. \$ _____ * |
| * The ending balance must always be a positive number.   |                |



**MICHIGAN DEPARTMENT OF STATE  
BUREAU OF ELECTIONS**

**Clear Form**

|   |   |
|---|---|
| <b>ITEMIZED CONTRIBUTIONS<br/>SCHEDULE 1<br/>LEGAL DEFENSE FUND</b> | 1. Legal Defense Fund I.D. Number and Name: _____ |
|---|---|

|                                       |           |                     |               |
|---------------------------------------|-----------|---------------------|---------------|
| Enter contributor's name and address. | 5. Amount | 6. Amount (In-Kind) | 7. Cumulative |
|---------------------------------------|-----------|---------------------|---------------|

|   |          |          |          |
|---|----------|----------|----------|
| 2. Name and Address: _____<br>3. Date of Receipt: _____   | \$ _____ | \$ _____ | \$ _____ |
| 4. If over \$100.00 cumulative, please provide: Occupation: _____<br>Employer: _____ Place of Business: _____ |          |          |          |

|   |          |          |          |
|---|----------|----------|----------|
| 2. Name and Address: _____<br>3. Date of Receipt: _____   | \$ _____ | \$ _____ | \$ _____ |
| 4. If over \$100.00 cumulative, please provide: Occupation: _____<br>Employer: _____ Place of Business: _____ |          |          |          |

|   |          |          |          |
|---|----------|----------|----------|
| 2. Name and Address: _____<br>3. Date of Receipt: _____   | \$ _____ | \$ _____ | \$ _____ |
| 4. If over \$100.00 cumulative, please provide: Occupation: _____<br>Employer: _____ Place of Business: _____ |          |          |          |

|   |          |          |          |
|---|----------|----------|----------|
| 2. Name and Address: _____<br>3. Date of Receipt: _____   | \$ _____ | \$ _____ | \$ _____ |
| 4. If over \$100.00 cumulative, please provide: Occupation: _____<br>Employer: _____ Place of Business: _____ |          |          |          |

|   |          |          |          |
|---|----------|----------|----------|
| 2. Name and Address: _____<br>3. Date of Receipt: _____   | \$ _____ | \$ _____ | \$ _____ |
| 4. If over \$100.00 cumulative, please provide: Occupation: _____<br>Employer: _____ Place of Business: _____ |          |          |          |

|   |          |          |          |
|---|----------|----------|----------|
| 2. Name and Address: _____<br>3. Date of Receipt: _____   | \$ _____ | \$ _____ | \$ _____ |
| 4. If over \$100.00 cumulative, please provide: Occupation: _____<br>Employer: _____ Place of Business: _____ |          |          |          |

|                |          |          |          |
|----------------|----------|----------|----------|
| Page Subtotal: | \$ _____ | \$ _____ | \$ _____ |
|----------------|----------|----------|----------|

|   |          |          |          |
|---|----------|----------|----------|
| Grand Total:<br>(Complete on last page of Schedule) | \$ _____ | \$ _____ | \$ _____ |
|---|----------|----------|----------|

|                     |                            |                            |  |
|---------------------|----------------------------|----------------------------|--|
| Page _____ of _____ | Forward to #1 Summary Page | Forward to #2 Summary Page |  |
|---------------------|----------------------------|----------------------------|--|





# APPENDIX C

## Reported Examples of Situations or Cases Involving Legal Defense Funds

- ***Politico*, “Rangel Starts Legal Defense Fund” (December 28, 2010).**

The article describes that U.S. Rep. Charles Rangel formed a legal defense fund to help cover his costs to respond to a U.S. House Ethics Committee investigation. The investigation concerned several alleged ethics violations by Rep. Rangel, including failing to accurately report his income, using public rent-controlled housing for campaign work, and other allegations. He formed the fund after telling the Committee he could no longer afford counsel for the proceedings. He described that he received authorization from the Committee on Standards of Official Conduct to raise funds for the “Charles B. Rangel Legal Expense Trust.” The article reports he was also facing a Federal Election Commission investigation into his alleged misuse of contributions to his political committee to pay his legal bills.

- ***Politico*, “Waters Opens Legal Defense Fund” (September 3, 2010).**

The article describes that U.S. Rep. Maxine Waters opened a legal defense fund to help cover her costs to respond to the investigation by the U.S. House Ethics Committee over allegations that she violated House rules. She was charged by the Ethics Committee with improperly intervening with the Treasury Department on behalf of a minority-owned bank in which her husband held more than \$350,000 of stock. The bank later received \$12 million in federal bailout funds.

- ***Free Press*, “Kilpatrick’s Legal Defense Fund is Nearly Depleted,” “Kilpatrick’s Donation Linked to Contractor in Bribe Case” (undated articles, viewed online February 1, 2011).**

The articles describe that Detroit Mayor Kwame Kilpatrick’s legal defense fund reported raising \$185,600. The fund was created to pay for costs related to eight felony counts the mayor was charged with including perjury, misconduct in office and obstruction of justice. The fund was reported to the Internal Revenue Service. The articles describe that the fund is being used to pay for attorneys and for a public relations firm that advises the mayor. Contributors include city contractors and prominent supporters of the mayor. The articles describe that one of the contributors was from a company owned by a contractor accused of bribing two former appointees of Mayor Kilpatrick.

- ***The Sacramento Bee*, “Perata Shifted \$1.5 Million in Campaign Cash to Legal Defense Fund” (December 12, 2008).**

The article describes that former California Senate leader Don Perata transferred \$1.5 million from a ballot measure campaign account to a legal fund he created to pay for his costs related to an FBI corruption investigation concerning his businesses. The ballot measure had been led by the senator. While the article describes that the transfer was legal at the time in California, one major contributor to the ballot measure campaign was quoted as saying that his organization “did not contribute the money with the intention that it would be transferred to a legal defense fund for Don Perata.”



- ***Carolina Journal Online*, “Former Sen. Swindell Sets Up Legal Defense Fund – Current and Former Democratic Lawmakers Contribute to Fight Defamation Suit” (January 26, 2011).**

The article describes that five current and former North Carolina state senators contributed to a legal defense fund established by Albin Swindell, a former state senator who was fighting a defamation lawsuit. The lawsuit contended the former senator lied about his opponent in his campaign advertising when he stated his opponent was arrested on drug charges. The law firm that had represented the former senator during his campaign was also representing him in the defamation lawsuit.

- ***The Olympian*, “Alaska Rep. Young Still Raising Money for Legal Defense Fund” (May 4, 2011).**

The article describes that U.S. Rep. Don Young is continuing to raise money for his legal bills even though he said that federal investigators had dropped a criminal inquiry into his campaign fundraising and other matters. The article describes that he declined to state whether he still owes money to his lawyers, or whether there is an additional inquiry pending. The article describes that when he set up his fund in 2008, it allowed him to “tap a new source of donors, including corporations and people who had already given to his campaign.” While lobbyists are barred under federal rules from contributing to his legal defense fund, contributors did include friends and fishery interests.

- ***The Arizona Republic*, “Arizona Lacks Disclosure Rules for Officials’ Defense Funds” (August 18, 2010).**

The article describes that high-profile public figures in Arizona are setting up funds to collect money from private donors to pay their legal bills, but the funds are largely not being disclosed. The article describes that the funds are often established to finance the officials’ legal bills relating to actions against them or the state government. Some of the funds were set up as trusts. Four such funds had been established since 2008 in Arizona, and the officials declined requests to report many of the donors’ names and amounts. The persons establishing the funds included the Governor (to help fund the response to a challenge to a bill concerning immigration), a county sheriff (to help fund the litigation concerning the same immigration bill, and to fund his countersuit against the federal government), a county supervisor (to help fund his response to corruption allegations), and a former congressman (to help fund his response to inquiries about his ties to former lobbyist Jack Abramoff). Past legal defense funds were created in Arizona by two former governors (one to fund his response to impeachment proceedings, the other to fund his defense in a bank fraud case.) The article also summarized recent legislation concerning legal defense funds in several jurisdictions.

# APPENDIX D



## Opportunities for Further Study

Here are some questions that appear to have been examined in jurisdictions considering proposals regarding legal defense funds. Many of these questions may be useful to examine in Washington if a legal defense funds provision is being considered to be enacted, or if future guidance is to be provided.

- Can candidates or elected officials create “legal defense funds” under current laws and rules?
- Should there be specific laws or rules allowing for or governing such funds?
- If so, who can contribute to the funds? Contractors with the state? Anonymous persons? Can there be in-kind contributions (example, donated legal services)?
- Should there be limits on the amounts to be contributed?
- Can campaign funds, or surplus campaign funds, or surplus campaign funds of other officeholders (transfers of funds), be used for legal defense funds?
- Are such donated funds considered campaign contributions or gifts?
- Is a legal defense fund using campaign contributions a personal use of campaign funds?
- Should there be restrictions on uses of the funds (to be used only for certain types of litigation, for example, not for defending against criminal charges)?
- What kind of accounts can be created? Where?
- Are the contributions to expenses from the fund disclosed publicly? Where? When? If not, should they be? Are there any additional considerations for some public officials, such as the judiciary, or administrative boards that perform quasi-judicial functions?
- When can a legal defense fund be formed? Only upon filing of a lawsuit? When should it end?
- What happens to any remaining funds once the litigation ends?
- Should there be recordkeeping or audit requirements?
- Should the candidate or officeholder have control of the funds, or should a committee or trustee?
- Do the campaign finance laws need to be amended to specifically address legal defense funds?
- Do the ethics laws need to be amended to specifically address legal defense funds?





**State of Washington**  
**PUBLIC DISCLOSURE COMMISSION**

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Toll Free 1-877-601-2828 • E-mail: [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov) • Website: [www.pdca.wa.gov](http://www.pdca.wa.gov)

October 2, 2012

Rob Maguire  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101

Re: Legal Services for Election-Related Litigation, and RCW 42.17A

Dear Mr. Maguire:

This letter follows up on your questions concerning RCW 42.17A as it applies to legal services, and the Commission's discussion on September 27, 2012.

The draft answers proposed by staff have been finalized, following that discussion. See enclosed.

Thank you.

Sincerely,

Nancy Krier  
General Counsel

Enclosure

**Questions and Answers by PDC Staff to Attorney Rob Maguire  
Regarding Legal Services and RCW 42.17A  
Final – Following Commission Discussion September 27, 2012**

**1. RCW 42.17A.005(13) excludes certain legal services from what is considered a contribution.**

- a. What does the phrase “regular employer” of the person/individual rendering the services mean in RCW 42.17A.005(13)(b)(viii)? For example, how does it apply to your situation (you are a partner in a law firm)?**

Background

RCW 42.17A.005(13)(b)(viii) excludes certain legal services from the definition of “contribution.” The provision was enacted in Initiative 134 in 1992. Initiative 134 established campaign contribution limits in RCW 42.17 (now codified at RCW 42.17A), and enacted other provisions. The statute states that “contribution” does not include:

(viii) Legal or accounting services rendered to or on behalf of:

(A) A *political party* or *caucus political committee* if the person paying for the services is the regular employer of the person rendering such services; or

(B) A *candidate* or an *authorized committee*<sup>1</sup> if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; ... (Emphasis added).

The statute also states that “contribution” does not include:

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. “Volunteer services,” for the purposes of this subsection, means services or labor for which the individual is not compensated by any person; ... (Emphasis added).

The Commission adopted WAC 390-17-405 (volunteer services) which, among other things, addresses this statute. The relevant part of the rule states:

(2) An attorney or accountant may donate his or her professional services to a *candidate, a candidate’s authorized committee, a political party or a caucus political committee*, without making a contribution in accordance with RCW 42.17A.005 (13)(b)(viii), if the attorney or accountant is:

- (a) Employed and his or her employer is paying for the services rendered;
- (b) Self-employed; or

<sup>1</sup> An “authorized committee” is a candidate’s authorized committee. See RCW 42.17A.005(3).

(c) Performing services for which no compensation is paid by any person. However, neither RCW 42.17A.005 (13)(b)(viii) nor this section authorizes the services of an attorney or an accountant to be provided to a political committee without a contribution ensuing, unless the political committee is a *candidate's authorized committee, political party or caucus political committee* and the conditions of RCW 42.17A.005 (13)(b)(viii) and (a), (b) or (c) of this subsection are satisfied, or unless the political committee pays the fair market value of the services rendered. (Emphasis added).

At this time we cannot find that staff has previously been asked to review an attorney's employment status with his/her firm with respect to who is the "regular employer" under this statute or rule (such as when an attorney is a partner). Staff would likely have to examine the relevant facts to determine if a firm was a "regular employer" of an attorney. The facts could include, for example, whether the attorney is considered an employee of the firm under employment law, the firm's website and marketing materials describing the attorney's status with the firm, and/or other resources.

However, in the past, staff have advised that the phrase "regular employer of the person rendering such services" means that if someone other than the attorney's firm pays for the legal services to or on behalf of a candidate, a candidate's authorized committee, a political party, or a caucus political committee<sup>2</sup> then those services are a reportable in-kind contribution of the payer subject to limits (that is, they are a contribution by the "third party").

Answer:

Therefore, in response to your question, at this time staff concludes that:

- In determining if a law firm is the "regular employer" of an attorney, staff will examine the facts surrounding the employment. At this time, staff will presume a partner, associate, or salaried attorney of a firm is "regularly employed" by the firm, unless the facts show otherwise. The same is true for in house counsel of an entity.
- Assuming an attorney is regularly employed by a firm and the attorney "donates" legal services to the entities described in the statute (*candidate, a candidate's authorized committee, a political party, or a caucus political committee*), and the attorney is paid or not paid for those services by the firm (and the firm is not paid by any other person), then a contribution does not result. All payments by a candidate or political committee for legal services are required to be disclosed as expenditures.
- If such an attorney is paid by a third party (not by the candidate, candidate's authorized committee, political party, or caucus political committee) for the legal

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<sup>2</sup> While your questions did not concern legal services related to ballot measure committees or continuing political committees, we note that PDC Interpretation 91-02 and PDC Declaratory Order No. 3 address some of those circumstances.



services, then an in-kind contribution (subject to limits) results from that third party.

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**b. How does this statute [RCW 42.17A.005(13)] apply to legal services provided with respect to a recount, or potential recount, or other election-related litigation?**

Answer:

At this time, staff concludes that under RCW 42.17A.005(13)(b)(viii) these legal services:

- Are not a contribution when they are provided to or on behalf of a *political party or caucus political committee* for any reason (including any litigation). That would include recount-related litigation. Staff reaches that conclusion because the statute provides no limitation on what types of laws or litigation attorneys may render services to these entities.
- Are not a contribution when provided to or on behalf of a *candidate or a candidate's authorized committee*, only when they are provided "solely for the purpose of ensuring compliance with state election or public disclosure laws."
  - "**State election laws**" are codified in Title 29A RCW. Recount procedures are codified at RCW 29A.64. Therefore, staff concludes that compliance with "state election laws" includes litigation involving compliance with recount election laws. Other possible litigation related to compliance with "election laws" (such as the other ballot-related litigation examples you provided<sup>3</sup>) would have to be reviewed on a case-by-case basis to determine the underlying claims and related statutes.
  - Staff believes "**public disclosure laws**" refers to RCW 42.17A in this context.<sup>4</sup> Therefore, compliance with "public disclosure laws" includes legal services for litigation initiating, concerning or responding to citizen action complaints filed under RCW 42.17A. It would also include legal services

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<sup>3</sup> Examples you gave include election-related litigation such as a lawsuit brought by the Libertarian Party challenging the Washington State Republican Party's status as a major political party under state law; litigation concerning candidates' description of their party preference; and citizen action complaints leading to candidates' depositions prior to Election Day. Other possible examples you described could include, lawsuits over mailing of military ballots; alleged inconsistent standards applied to discerning voter intent (during initial tabulation and recounts); challenges to the accuracy of voting machines (in advance and after election day); alleged inconsistent standards in allowing voters to remedy deficiencies in their mail ballots (curing signature defects, for example); ballot security issues; observer access; accessible voting; voter intimidation, etc.

<sup>4</sup> The Public Records Act provisions have been recodified to RCW 42.56. The PDC does not enforce RCW 42.56.

provided to respond to other actions proceeding or filed under RCW 42.17A seeking compliance with RCW 42.17A, such as Commission investigations and enforcement actions for complaints filed directly with the Commission, and any subsequent court actions.

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**2. In 2004, funds were provided from various organizations/entities to assist in the recount litigation in the gubernatorial race. You are interested in knowing what sources of funds can be used for a possible recount in 2012, and how they are to be reported (if reporting is required). For example:**

**a. What were those sources of funds in 2004?**

There were various sources. See next question at # 2.c.i.

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**i. Did they include political party exempt funds (see former RCW 42.17A.640(15), now codified at RCW 42.17A.405(15))? Did they include other funds?**

Answer:

- In 2004, gubernatorial election recounts occurred and lawsuits challenging the recounts resulted. As a consequence, there were costs related to the recounts, and related to that litigation. Various groups and entities donated funds to the political parties to help finance the recounts, and to finance the litigation. The litigation funds were contributed to the parties' exempt accounts. Those groups and entities included, for example, the national Republican Governors Association, the Democratic Governors Association, unions, trial lawyers, federal and state political committees, corporations, and others. (Some of the funds are reported to have been used for the recount itself, some funds to pay for the litigation).
- In 2004, one gubernatorial candidate had been advised by PDC staff that he should file a new political committee registration form after the November general election, in order to raise and disclose separate funding for recount litigation. (The election cycle at that time ended November 30). However, the Commission later dismissed a complaint concerning that candidate, determining that those funds were not campaign contributions subject to RCW 42.17.

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**ii. How were those funds reported to the PDC, if they were required to be reported?**

Answer:

- The funds contributed to the state political parties' exempt accounts were disclosed on contribution and expenditure reports (C-3 reports and Schedule A to C-4 reports) filed with the PDC by the state political parties. Amounts owed to law firms were reported as obligations and debts.



- The gubernatorial candidate's recount-related funds and expenditures were disclosed in reports filed with the PDC by the individual, although those funds were later determined to not be subject to those filing requirements.

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**b. In 2012, can a state political party receive funds from a national political party for recount litigation? How about for other election-related litigation?**

Background

**Definitions.** "Candidate" means "any individual who seeks nomination for election or election to public office." RCW 42.17A.005(7). In the past, staff have described that the definition is "out of effect" after the date of the relevant election (except for receiving contributions subject to limit through December 31.<sup>5</sup> See below). A "contribution" is made "for the purpose of assisting any candidate or political committee." WAC 390-05-210.

**Exempt Funds ("Soft Money").** RCW 42.17A.405(15) authorizes certain contributions that are exempt from contribution limits ("exempt funds" or "soft money") to be earmarked and used for "ballot counting" so long as there is no promotion of or political advertising for individual candidates. Therefore, state political parties often create "exempt accounts" separate from the accounts receiving funds subject to limit ("hard money" accounts).

In particular, RCW 42.17A.405(15) lists authorized uses for exempt funds. They are:

- |  |
|--|
| <p>An expenditure or contribution earmarked for →</p> <ul style="list-style-type: none"><li>▪ voter registration</li><li>▪ absentee ballot information</li><li>▪ precinct caucuses</li><li>▪ get-out-the-vote campaigns</li><li>▪ precinct judges or inspectors</li><li>▪ sample ballots</li><li>▪ ballot counting</li></ul> <p>all without promotion of or political advertising for individual candidates.</p> <p><i>(continued)</i></p> |
|--|

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<sup>5</sup> "Election" includes "any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters." RCW 42.17A.005(16). "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition. RCW 42.17A.005(17). "Election cycle" begins the first day of January after the date of the last previous general election for the office that the candidate seeks and ends December 31 after the next election for the office. RCW 42.17A.005(18). For limits purposes, contributions to candidates subject to limits that are made with respect to a general election may not be made after the final day of the applicable election cycle. RCW 42.17A.405(2); RCW 42.17A.410(2). That is, contributions to a candidate's campaign and for a general election must be made by December 31.

Also a candidate who is a state official or state legislator would also be subject to the legislative session freeze, which is a timing provision limiting receipt of contributions, beginning the 30 days before the regular legislative session, and on the date a special session convenes. RCW 42.17A.560.

An expenditure by a political committee for →

- its own internal organization or
- fund-raising

without direct association with individual candidates.

An expenditure or contribution for →

- independent expenditures as defined in RCW 42.17A.005
- electioneering communications as defined in RCW 42.17A.005

Campaign contributions are not included in the list of authorized uses for exempt funds. Thus, in staff's view, under this law exempt funds cannot be used for campaign contributions.

In staff's view, national political parties (and others for that matter) can contribute unlimited funds to the state political parties' exempt accounts and earmark those funds for "ballot counting."<sup>6</sup> Expenditures from this account are not subject to dollar limits.

In staff's view, "ballot counting" includes recounts, as well as litigation regarding ballot counting and recounts. In staff's view, "ballot counting" activities are not "promotion of or political advertising" for individual candidates. In staff's view, recount activities concern ballot tallies and *for most of RCW 42.17A's purposes*, the candidate's "election" is over once the general election day ends. For limits purposes, however, the "election cycle" continues until December 31.<sup>7</sup> That means until December 31, the contributions a candidate receives are still subject to limit.

***Non-Exempt Funds ("Hard Money")***. The national political parties can also make unlimited contributions to the state parties' non-exempt account. Expenditures from this account by the state parties are typically used to make contributions to candidates that are subject to limit under RCW 42.17A.405, although staff have informally advised that the parties can use non-exempt funds for any other purpose.

Individuals can also contribute unlimited funds to the state parties' non-exempt account. All other persons are limited to contributing \$4,500/year to the non-exempt account.

Finally, a state political party can also transfer non-exempt funds to its exempt funds account, but then those funds are subject to the limited uses listed in RCW 42.17A.405(15).

Answer:

- A state political party can use its exempt funds to finance recount litigation. Those funds would include unlimited funds the national political party contributes to the state political party's exempt funds account that are earmarked for "ballot counting."

<sup>6</sup> Except in the 21-days preceding a general election, at which point they are subject to a \$5,000 maximum. RCW 42.17A.420.

<sup>7</sup> See question # 1.c. for further discussion regarding whether a candidate can use these active campaign funds received through December 31 for recount litigation, as "postelection campaign expenses."



- With respect to using exempt funds to finance other election-related litigation (see your litigation examples in footnote 3), staff's answer is, "it depends." Staff will need to examine the litigation to determine if the use fits within one of the permissible categories listed in RCW 42.17A.405(15).
- With respect to using non-exempt funds to finance recount or other election-related litigation, a state political party could use those funds to:
  - Transfer them to the exempt account, for uses described above.
  - Through December 31, make contributions directly to a candidate, subject to the candidate's limit. The candidate *potentially* could use the money for recounts/recount litigation *if* the Commission determines a candidate's recount expenses (and recount litigation expenses) are "postelection campaign expenses." See next question at # 1.c.<sup>8</sup>
  - Assuming the state political party is also a party to the recount litigation, use the funds for direct expenditures for its legal services.
- With respect to funding recount or other election-related litigation from other sources, see next question at # 1.c below.

**c. In 2012, are there other funds that can be used for recount litigation? How about other election-related litigation?**

Background

**Candidate's Campaign Funds.** A candidate can use campaign funds for his/her campaign expenditures, but cannot expend those funds for personal use. RCW 42.17A.445.<sup>9</sup> WAC 390-16-238 states that: "Except as specifically allowed by chapter 42.17A RCW, any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a personal use of campaign funds prohibited under RCW 42.17A.445." The rule also provides that, "An expenditure of a candidate's campaign funds shall be considered personal use if it fulfills or pays for any commitment, obligation or expense that would exist irrespective of the candidate's election campaign."

**Candidate's Surplus Funds.** "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the

<sup>8</sup> To date, staff has been concerned that such a use could be viewed as a candidate's prohibited personal use of campaign funds under RCW 42.17A.445. Therefore, to date staff has not advised candidates to use those active campaign funds to finance recounts or recount litigation.

<sup>9</sup> Campaign contributions may be paid to a candidate, treasurer, or for other individual's personal use only to pay for (1) lost earning resulting from the campaign, (2) "direct out-of-pocket election campaign and postelection campaign related expenses made by the individual", and (3) loans up to a limit. RCW 42.17A.445. Staff will review with the Commission whether "postelection campaign related expenses" could include recount litigation, therefore permitting active campaign funds to be used for such litigation.

contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate with respect to that election. RCW 42.17A.005(46). A candidate can expend surplus campaign funds only for the purposes listed in RCW 42.17A.430.<sup>10</sup> A candidate's recount litigation is not listed as a permissible use; however, the statute permits a candidate to give those surplus funds to a political party. *Id.*

**“Legal Defense Funds.”** RCW 42.17A currently does not include specific requirements for “legal defense funds,” aside from potential disclosures on the personal financial affairs reporting form (F-1).

Answer:

- To date, in staff's view, under RCW 42.17A, the following can be used to pay for recount litigation:
  - A state political party can use its exempt funds (“soft money”).
  - A state political party can use its non-exempt funds (“hard money”) by transferring the funds to the exempt account or otherwise use them for activities listed in RCW 42.17A.405(15).
  - A candidate can establish a separate “legal defense fund” for the litigation, which is generally not subject to regulation under RCW 42.17A.<sup>11</sup>
- In addition, as discussed at the September 27, 2012 Commission meeting, a candidate's active campaign funds can be used to pay for recount litigation.
- To date, staff has advised that under RCW 42.17A, the following cannot be used to pay for recount litigation:
  - A candidate's surplus campaign funds (except a candidate can transfer them to a state political party).

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<sup>10</sup> Surplus funds can be used for “non-reimbursed public office related expenses.” RCW 42.17A.430(7). At this time, staff does not consider recount litigation as a “public office related” expense.

<sup>11</sup> Under current law, donations to and payments from a candidate's separate “legal defense fund” would not be required to be reported to the PDC unless the fund constitutes the type of account or income/compensation to the candidate that would be required to be disclosed on a personal financial affairs form (F-1 report). See RCW 42.17A.710. In the absence of any facts describing a particular fund's creation, donations, or payouts, staff cannot respond further about possible F-1 reporting requirements for a possible separate “legal defense fund.” Also, while contributions to a separate legal defense fund are not generally otherwise governed by RCW 42.17A at this time, an official may be subject to other laws that would impact the creation or acceptance of such funds, such as state or local ethics or gifts laws/rules. Staff does not comment on those other laws and you or your clients should contact the relevant agencies implementing those laws.

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#### d. How should the funds be reported?

##### Answer:

The funds should be reported as follows, based on the account they are contributed to and expended from:

- Funds contributed to and expenses from a state political party's exempt account must be reported to the PDC on the party's exempt account C-3s, C-4s, etc.
- Funds contributed to and expenses from a state political party's non-exempt account must be reported on the party's non-exempt account C-3s, C-4s, etc.
- A candidate's contributions and expenditures must be reported on the candidate's and committee's C-3s, C-4s, etc.
- A candidate's surplus funds transfers must be reported on a candidate's Schedule A expenditures, and if the transfer is to a state political party, it must be reported on the party's C-3 report as a contribution received.
- A candidate's "separate legal defense fund" may need to be disclosed on the candidate's F-1 report, depending upon the facts regarding its creation, funding and distribution. Otherwise, these separate funds are not currently required to be reported to the PDC.

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#### e. Can those funds be used for pre-election anticipatory legal services provided to prepare for a potential recount, as well as any post-election legal services related to a recount and recount litigation?

##### Answer:

- See # 1.b.

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### 3. As noted, the entities that may have resources to pay for recount-related litigation are often national entities, for example, governors associations. If they provide funds or make expenditures to assist a candidate in recount-related litigation, is there a possible "coordination" issue?

##### Background

**Contributions, Expenditures & Coordination.** A candidate can accept contributions subject to limit for a general election, up to December 31 (the end of the "election cycle"). RCW 42.17A.405(2); RCW 42.17A.410(2). A "contribution" is made "for the purpose of assisting any candidate or political committee." WAC 390-05-210(1).

A contribution also includes "expenditures." RCW 42.17A.005 (13)(ii). "Expenditures" includes "anything of value for the purpose of assisting, benefiting, or honoring any



public official or candidate<sup>12</sup> or assisting in furthering or opposing any election campaign.” (Emphasis added.)

A “contribution” also includes an “expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents ...” RCW 42.17A.005(13)(ii). This concept is often referred to as “coordination.”

The Commission adopted a rule on coordination. WAC 390-05-210. The rule describes when certain activities/expenditures are presumed to be coordinated with a candidate and therefore constitute a “contribution.” For example, it includes certain consulting with candidates, and consulting with a bona fide political party, on expenditures. This rule helps inform contributors and campaigns that they if coordinate campaign expenditures, a contribution can result.

**Other Funds.** Except for the “election cycle” wind-down period for accepting contributions subject to limit (through December 31), RCW 42.17A does not generally otherwise regulate use or disclosure of a candidate’s funds that are unrelated to a campaign unless they are in an account or obtained through income/compensation that must be disclosed on an F-1.<sup>13</sup>

Answer:

- In staff’s view, *prior to the general election and until December 31*, a person such as a national organization you describe typically cannot coordinate with a candidate for expenditures to be made on the candidate’s behalf, based upon a candidate’s plans, projects or needs, or with respect to the other criteria in WAC 390-05-210, without a *presumptive* contribution being made to the candidate.
- However, such an organization can give the funds to the exempt account of a state political party, and the party can then “coordinate” with the candidate on the recount litigation and report the value of a party’s expenditures. That is because use of exempt funds are not subject to limit (and thus not subject to the coordination restrictions that may result in a limit being reached).
- Also, a “presumptive contribution” does not occur, and coordination does not result, when legal services are provided at any time to or on behalf of a candidate or a political party, by the regular employer of an attorney, with respect to compliance with election laws (including recount litigation). That is because those legal services are excluded from what is a “contribution.” See question # 1a.

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<sup>12</sup> Staff views the phrase “assisting, benefiting or honoring any public official or candidate...” to explain what items are to be disclosed on campaign expenditure reports by reporting entities (political parties, candidates, political committees, etc.). At this time, it is not staff’s view that that any item of value that may somehow “benefit” or “honor” a public official or candidate, automatically qualifies as a contribution. Staff would need to review the relevant facts related to a particular question.

<sup>13</sup> A candidate can have only one campaign account. RCW 42.17A.440.

- In addition, persons may also present facts that could cause the Commission to find the presumption of a contribution being made to a candidate is rebutted for other alleged “coordinated” activities.

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**a. What if a “citizen action letter” (45-day letter) under RCW 42.17A.765 results in litigation for a candidate, or other election-related litigation occurs, and the candidate does not have funds on hand to pay for legal services to respond?**

Answer:

- See # 1.b (regarding legal services) and # 1.c. (regarding a separate legal defense fund).

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**b. What funds could the candidate/former candidate use to pay for those legal services?**

Answer:

- See # 1.b (regarding legal services) and # 1.c. (regarding a separate legal defense fund).

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**c. Could a state political party help pay for those legal services?**

Answer:

- If the state political party is the regular employer of an attorney (in house counsel) and the attorney is providing legal services on behalf of a candidate, yes. See # 1.a.

**RCW 42.17A.405****Limits specified—Exemptions.**

(1) The contribution limits in this section apply to:

- (a) Candidates for legislative office;
- (b) Candidates for state office other than legislative office;
- (c) Candidates for county office;
- (d) Candidates for special purpose district office if that district is authorized to provide freight and passenger transfer and terminal facilities and that district has over two hundred thousand registered voters;
- (e) Candidates for city council office;
- (f) Candidates for mayoral office;
- (g) Candidates for school board office;
- (h) Candidates for public hospital district board of commissioners in districts with a population over one hundred fifty thousand;

(i) Persons holding an office in (a) through (h) of this subsection against whom recall charges have been filed or to a political committee having the expectation of making expenditures in support of the recall of a person holding the office;

- (j) Caucus political committees;
- (k) Bona fide political parties.

(2) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a legislative office, county office, city council office, mayoral office, school board office, or public hospital district board of commissioners that in the aggregate exceed \*eight hundred dollars or to a candidate for a public office in a special purpose district or a state office other than a legislative office that in the aggregate exceed \*one thousand six hundred dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions to candidates subject to the limits in this section made with respect to a primary may not be made after the date of the primary. However, contributions to a candidate or a candidate's authorized committee may be made with respect to a primary until thirty days after the primary, subject to the following limitations: (a) The candidate lost the primary; (b) the candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary; and (c) the contributions may only be raised and spent to satisfy the outstanding debt. Contributions to candidates subject to the limits in this section made with respect to a general election may not be made after the final day of the applicable election cycle.

(3) No person, other than a bona fide political party or a caucus political committee, may make contributions to a state official, a county official, a city official, a school board member, a public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, county official, city official, school board member, public hospital district commissioner, or public official in a special purpose district during a recall campaign that in the aggregate exceed \*eight hundred dollars if for a legislative office, county office, school board office, public hospital district office, or city office, or \*one thousand six hundred dollars if for a special purpose district office or a state office other than a legislative office.

(4)(a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus political committee may make contributions to a candidate during an election cycle that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.



(b) No candidate may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed forty cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(5)(a) Notwithstanding subsection (3) of this section, no bona fide political party or caucus political committee may make contributions to a state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district during a recall campaign that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No official holding an office specified in subsection (1) of this section against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of the official may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(6) For purposes of determining contribution limits under subsections (4) and (5) of this section, the number of eligible registered voters in a jurisdiction is the number at the time of the most recent general election in the jurisdiction.

(7) Notwithstanding subsections (2) through (5) of this section, no person other than an individual, bona fide political party, or caucus political committee may make contributions reportable under this chapter to a caucus political committee that in the aggregate exceed \*eight hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed \*four thousand dollars in a calendar year. This subsection does not apply to loans made in the ordinary course of business.

(8) For the purposes of RCW [42.17A.125](#), [42.17A.405](#) through [42.17A.415](#), [42.17A.450](#) through [42.17A.495](#), [42.17A.500](#), [42.17A.560](#), and [42.17A.565](#), a contribution to the authorized political committee of a candidate or of an official specified in subsection (1) of this section against whom recall charges have been filed is considered to be a contribution to the candidate or official.

(9) A contribution received within the twelve-month period after a recall election concerning an office specified in subsection (1) of this section is considered to be a contribution during that recall campaign if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(10) The contributions allowed by subsection (3) of this section are in addition to those allowed by subsection (2) of this section, and the contributions allowed by subsection (5) of this section are in addition to those allowed by subsection (4) of this section.

(11) RCW [42.17A.125](#), [42.17A.405](#) through [42.17A.415](#), [42.17A.450](#) through [42.17A.495](#), [42.17A.500](#), [42.17A.560](#), and [42.17A.565](#) apply to a special election conducted to fill a vacancy in an office specified in subsection (1) of this section. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(12) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of \*ten dollars or

more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a state office candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(13) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate specified in subsection (1) of this section, or an official specified in subsection (1) of this section against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of an official specified in subsection (1) of this section if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the official.

(14) No person may accept contributions that exceed the contribution limitations provided in this section.

(15) The following contributions are exempt from the contribution limits of this section:

(a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates;

(b) An expenditure by a political committee for its own internal organization or fund-raising without direct association with individual candidates; or

(c) An expenditure or contribution for independent expenditures as defined in RCW **42.17A.005** or electioneering communications as defined in RCW **42.17A.005**.

[ **2013 c 311 § 1**; **2012 c 202 § 1**. Prior: **2010 c 206 § 1**; **2010 c 204 § 602**; **2006 c 348 § 1**; **2005 c 445 § 11**; prior: **2001 c 208 § 1**; **1995 c 397 § 20**; 1993 c 2 § 4 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW **42.17.640**.]

#### NOTES:

**\*Reviser's note:** The dollar amounts in this section may have been adjusted for inflation by rule of the commission adopted under the authority of RCW **42.17A.125**. For current dollar amounts, see WAC 390-05-400.

## WAC 390-17-302

### Contributions after the primary election.

(1) Pursuant to RCW **42.17A.405** and **42.17A.410**, the date of the primary is the last day for making primary-related contributions unless a candidate subject to contribution limits loses in the primary, that candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary, and the contributions are used to satisfy this outstanding debt.

(2) For purposes of the contribution limit in RCW **42.17A.405** and **42.17A.410**, any contribution made up to thirty days after the primary election pursuant to RCW **42.17A.405** and **42.17A.410** is aggregated with contributions made on or before the date of the primary from the same contributor and any person with whom that contributor shares a limit under RCW **42.17A.455** and WAC **390-16-309**.

(3) The day following the primary election is considered the first day of the thirty-day period during which contributions may be made to candidates subject to contribution limits who lose in the primary election and who have outstanding primary debts.

(4) For purposes of RCW **42.17A.405** and **42.17A.410**, "outstanding primary debts," "outstanding debts" and "debts outstanding" all mean:

(a) Unpaid primary-election related debts incurred on or before the date of the primary by the authorized committee of a candidate who lost the primary election for an office subject to contribution limits; and

(b) Reasonable costs associated with activities of the losing candidate's authorized committee necessary to retire the primary-related debts it incurred on or before the date of the primary.

Examples of such reasonable costs include:

(i) Necessary administrative expenses (office space rental, staff wages, taxes, supplies, telephone and computer costs, postage, and the like) for activities actually and directly related to retiring the committee's debt; and

(ii) Necessary expenses actually and directly related to the fund-raising activities undertaken to retire the debt, as long as all persons solicited for contributions are notified that the contributions are subject to that contributor's primary election limit for that losing candidate.

(5) Nothing in this section is to be construed as authorizing contributors to make, or candidates subject to contribution limits who lose the primary to receive, contributions that are used for a purpose not specifically authorized by RCW **42.17A.405** or **42.17A.410**, including use for some future election or as surplus funds.

(6) All contributions received in excess of the sum needed to satisfy outstanding primary debts shall be returned to the original contributors in an amount not to exceed the amount contributed in accordance with the first in, first out accounting principle wherein the most recent contribution received is the first to be returned until all excess funds are returned to contributors.

[Statutory Authority: RCW **42.17A.110**. WSR 12-03-002, § 390-17-302, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW **42.17.370**(1). WSR 10-20-012, § 390-17-302, filed 9/24/10, effective 10/25/10. Statutory Authority: RCW **42.17.370**. WSR 07-07-005, § 390-17-302, filed 3/8/07, effective 4/8/07. Statutory Authority: RCW **42.17.370** and **42.17.690**. WSR 01-22-050, § 390-17-302, filed 10/31/01, effective 1/1/02.]



## WAC 390-17-300

### Contribution designation for primary and general election.

(1) Pursuant to RCW **42.17A.405** and **42.17A.410**, if a contribution is designated in writing by the contributor for a specific election, the contribution will be attributed to the contributor's limit for that designated election.

(2) An undesignated contribution made prior to the date of a primary election shall be attributed to the contributor's limit for the primary election. Undesignated contributions made after the date of the primary shall be attributed to the contributor's limit for the general election.

(3) Any portion of an undesignated contribution made prior to the date of the primary which exceeds the contributor's primary election contribution limit shall be attributed to the contributor's limit for the general election.

(4) Contributions for the primary election shall be accounted for separately from those for the general election, such that campaign records reflect one aggregate contribution total for each contributor giving in the primary election as well as one aggregate contribution total for each contributor giving in the general election.

(5) General election contributions shall not be spent for the primary election if to do so would cause the contributor of the general election contribution to exceed that contributor's contribution limit for the primary election.

(6) If a candidate loses in the primary election, or otherwise is not a candidate in the general election, all contributions attributed to the primary election remaining after repayment of outstanding campaign obligations shall be considered surplus funds, disposal of which is governed by RCW **42.17A.430**. If a candidate loses in the primary election, or otherwise is not a candidate in the general election, all contributions attributed to the general election shall be returned to the contributors of the funds in an amount equal to the contributor's general election aggregate total. If a portion of a contributor's general election contribution was spent on the primary election consistent with subsection (5) of this section, the amount returned to the contributor may be reduced by the amount of the contribution spent on the primary election.

[Statutory Authority: RCW **42.17A.110**. WSR 12-03-002, § 390-17-300, filed 1/4/12, effective 2/4/12.  
Statutory Authority: RCW **42.17.370**. WSR 07-07-005, § 390-17-300, filed 3/8/07, effective 4/8/07.  
Statutory Authority: RCW **42.17.390**. WSR 94-07-141, § 390-17-300, filed 3/23/94, effective 4/23/94.  
Statutory Authority: RCW **42.17.370**. WSR 93-16-064, § 390-17-300, filed 7/30/93, effective 8/30/93.]

## WAC 390-16-230

### Surplus campaign funds—Use in future.

(1) If at any time in the future or after the last day of the election cycle for candidates as defined in RCW **42.17A.005(7)** any contribution is received or an expenditure is made from surplus funds for any purpose which would qualify the recipient or person who made the expenditure as a candidate or political committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at his or her last election. Within fourteen days of the day such contribution is received or expenditure is made, such candidate or political committee shall file (a) a final report for the previous campaign as provided in RCW **42.17A.235** and **42.17A.240** and (b) a statement of organization and initial report for the new campaign as provided by RCW **42.17A.205**, **42.17A.235** and **42.17A.240**. The surplus funds may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." All augmentations to and all expenditures made from the retained surplus funds after the last day of the election cycle shall be reported in detail as to source, recipient, purpose, amount and date of each transaction.

(2) For candidates as defined in RCW **42.17A.005(7)**, if at any time after the last day of the election cycle, any contribution is received or expenditure is made from such surplus funds for any purpose which would qualify the recipient or person who made the expenditure as a candidate or authorized committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at his or her last election. Within fourteen days of the day such contribution is received or expenditure is made, such candidate or authorized committee shall file (a) a final report for the previous campaign as provided in RCW **42.17A.235** and **42.17A.240** and (b) a statement of organization and initial report for the new campaign as provided by RCW **42.17A.205**, **42.17A.235** and **42.17A.240**. The surplus funds as of the last day of the election cycle may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." "Funds from previous campaign" carried forward by a candidate to his or her new campaign are not subject to contribution limits set forth in RCW **42.17A.405**.

(3) A political committee formed to support or oppose a particular ballot proposition or particular candidates which retains surplus funds to use in support or opposition of other candidates or of other ballot propositions has become a continuing political committee and must thereafter register and report in accordance with chapter **42.17A** RCW.

[Statutory Authority: RCW **42.17A.110**. WSR 12-03-002, § 390-16-230, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW **42.17.370**. WSR 07-07-005, § 390-16-230, filed 3/8/07, effective 4/8/07; WSR 93-22-002, § 390-16-230, filed 10/20/93, effective 11/20/93; WSR 93-16-064, § 390-16-230, filed 7/30/93, effective 8/30/93. Statutory Authority: RCW **42.17.370(1)**. WSR 86-04-071 (Order 86-01), § 390-16-230, filed 2/5/86; WSR 82-14-016 (Order 82-04), § 390-16-230, filed 6/28/82; Order 70, § 390-16-230, filed 2/25/76; Order 62, § 390-16-230, filed 8/26/75.]

**RCW 42.17A.445****Personal use of contributions—When permitted.**

Contributions received and reported in accordance with RCW **42.17A.220** through **42.17A.240** and **42.17A.425** may only be paid to a candidate, or a treasurer or other individual or expended for such individual's personal use under the following circumstances:

(1) Reimbursement for or payments to cover lost earnings incurred as a result of campaigning or services performed for the political committee. Lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record shall be maintained by the candidate or the candidate's authorized committee in accordance with RCW **42.17A.235**.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. To receive reimbursement from the political committee, the individual shall provide the political committee with written documentation as to the amount, date, and description of each expense, and the political committee shall include a copy of such information when its expenditure for such reimbursement is reported pursuant to RCW **42.17A.240**.

(3) Repayment of loans made by the individual to political committees shall be reported pursuant to RCW **42.17A.240**. However, contributions may not be used to reimburse a candidate for loans totaling more than \*four thousand seven hundred dollars made by the candidate to the candidate's own authorized committee.

[ **2010 c 204 § 608**; **1995 c 397 § 29**; 1993 c 2 § 21 (Initiative Measure No. 134, approved November 3, 1992); **1989 c 280 § 12**; **1985 c 367 § 7**; **1977 ex.s. c 336 § 6**. Formerly RCW **42.17.125**.]

**NOTES:**

**\*Reviser's note:** The dollar amounts in this section may have been adjusted for inflation by rule of the commission adopted under the authority of RCW **42.17A.125**. For current dollar amounts, see WAC 390-05-400.

**Effective date—1989 c 280:** See note following RCW **42.17A.005**.

**Severability—1977 ex.s. c 336:** See note following RCW **42.17A.205**.



## WAC 390-16-238

### Personal use of contributions—Standard.

(1) Except as specifically allowed by chapter **42.17A** RCW, any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a personal use of campaign funds prohibited under RCW **42.17A.445**.

(2) An expenditure of a candidate's campaign funds shall be considered personal use if it fulfills or pays for any commitment, obligation or expense that would exist irrespective of the candidate's election campaign.

(3) If an activity or expenditure is both personal and campaign related, the campaign may pay no more than the fair market value of its share of the activity or expenditure. For example, if a candidate uses a personal vehicle for campaign purposes, the campaign may reimburse the candidate for:

(a) The prorated share of documented gasoline, maintenance and insurance costs directly related to the campaign's usage of the vehicle; or

(b) The standard mileage rate established by the Internal Revenue Service for those documented miles directly related to the campaign's usage.

(4) Examples of expenditures presumed to be for personal use include, but are not limited to:

(a) Mortgage, rent, utility or maintenance expenses for personal living accommodations;

(b) Clothing purchases and maintenance expenses not related to the campaign;

(c) Automobile expenses not related to the campaign;

(d) Travel expenses not related to the campaign;

(e) Household food items;

(f) Restaurant expenses except for in-person fund-raising or campaign organizational activities;

(g) Tuition payments not related to the campaign;

(h) Admission to sporting events, concerts, theaters, or other forms of entertainment unless the event is primarily related to the candidate's campaign;

(i) Country club membership fees, dues and payments;

(j) Health club or recreational facility membership fees, dues and payments;

(k) Social, civic, fraternal, or professional membership dues, fees and payments unless the expenditure occurs during an election year and membership is required to gain access to the organization's mailing list for campaign purposes or other facilities for the candidate's campaign;

(l) Home or business internet service provider costs;

(m) Home or business newspaper and periodical subscriptions;

(n) Greeting cards to persons who would customarily receive such cards (e.g., family, friends and business associates).

[Statutory Authority: RCW **42.17A.110**. WSR 12-03-002, § 390-16-238, filed 1/4/12, effective 2/4/12.

Statutory Authority: RCW **42.17.370**(1). WSR 04-12-055, § 390-16-238, filed 5/28/04, effective

6/28/04. Statutory Authority: RCW **42.17.390**. WSR 94-07-141, § 390-16-238, filed 3/23/94, effective 4/23/94.]

**RCW 42.17A.005****Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(3) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(4) "Ballot proposition" means any "measure" as defined by RCW [29A.04.091](#), or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

(5) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(6) "Bona fide political party" means:

(a) An organization that has been recognized as a minor political party by the secretary of state;

(b) The governing body of the state organization of a major political party, as defined in RCW [29A.04.086](#), that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(7) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(8) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(9) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(10) "Commission" means the agency established under RCW [42.17A.100](#).

(11) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind. For the purpose of compliance with RCW [42.17A.710](#), "compensation" does not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(12) "Continuing political committee" means a political committee that is an organization of

(39) "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(40) "Public record" has the definition in RCW **42.56.010**.

(41) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW **29A.56.120** and ending thirty days after the recall election.

(42)(a) "Sponsor" for purposes of an electioneering communications, independent expenditures, or political advertising means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(b) "Sponsor," for purposes of a political committee, means any person, except an authorized committee, to whom any of the following applies:

(i) The committee receives eighty percent or more of its contributions either from the person or from the person's members, officers, employees, or shareholders;

(ii) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

(43) "Sponsored committee" means a committee, other than an authorized committee, that has one or more sponsors.

(44) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(45) "State official" means a person who holds a state office.

(46) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate with respect to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW **42.17A.255**.

(47) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW **42.17A.210**, to perform the duties specified in that section.

[ **2011 c 145 § 2**; **2011 c 60 § 19**. Prior: **2010 c 204 § 101**; **2008 c 6 § 201**; prior: **2007 c 358 § 1**; **2007 c 180 § 1**; **2005 c 445 § 6**; **2002 c 75 § 1**; **1995 c 397 § 1**; **1992 c 139 § 1**; 1991 sp.s. c 18 § 1; **1990 c 139 § 2**; prior: **1989 c 280 § 1**; **1989 c 175 § 89**; **1984 c 34 § 5**; **1979 ex.s. c 50 § 1**; **1977 ex.s. c 313 § 1**; **1975 1st ex.s. c 294 § 2**; 1973 c 1 § 2 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.020**.]

## NOTES:

**Reviser's note:** \*(1) The dollar amounts in this section may have been adjusted for inflation by rule of the commission adopted under the authority of RCW **42.17A.125**. For current dollar amounts, see WAC 390-05-400.

(2) This section was amended by 2011 c 60 § 19 and by 2011 c 145 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW **1.12.025(2)**. For rule of construction, see RCW **1.12.025(1)**.

**Findings—Intent—2011 c 145:** "The legislature finds that timely and full disclosure of election campaign funding and expenditures is essential to a well-functioning democracy in which Washington's voters can judge for themselves what is appropriate based on ideologies, programs, and policies. Long-term voter engagement and confidence depends on the public knowing who is



**RCW 42.17A.430****Disposal of surplus funds.**

The surplus funds of a candidate or a candidate's authorized committee may only be disposed of in any one or more of the following ways:

(1) Return the surplus to a contributor in an amount not to exceed that contributor's original contribution;

(2) Using surplus, reimburse the candidate for lost earnings incurred as a result of that candidate's election campaign. Lost earnings shall be verifiable as unpaid salary or, when the candidate is not salaried, as an amount not to exceed income received by the candidate for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the candidate or the candidate's authorized committee. The committee shall maintain a copy of this record in accordance with \*RCW 42.17A.235(6);

(3) Transfer the surplus without limit to a political party or to a caucus political committee;

(4) Donate the surplus to a charitable organization registered in accordance with chapter 19.09 RCW;

(5) Transmit the surplus to the state treasurer for deposit in the general fund, the Washington state legacy project, state library, and archives account under RCW 43.07.380, or the legislative international trade account under RCW 43.15.050, as specified by the candidate or political committee; or

(6) Hold the surplus in the depository or depositories designated in accordance with RCW 42.17A.215 for possible use in a future election campaign for the same office last sought by the candidate and report any such disposition in accordance with RCW 42.17A.240. If the candidate subsequently announces or publicly files for office, the appropriate information must be reported to the commission in accordance with RCW 42.17A.205 through 42.17A.240. If a subsequent office is not sought the surplus held shall be disposed of in accordance with the requirements of this section.

(7) Hold the surplus campaign funds in a separate account for nonreimbursed public office-related expenses or as provided in this section, and report any such disposition in accordance with RCW 42.17A.240. The separate account required under this subsection shall not be used for deposits of campaign funds that are not surplus.

(8) No candidate or authorized committee may transfer funds to any other candidate or other political committee.

The disposal of surplus funds under this section shall not be considered a contribution for purposes of this chapter.

[ 2010 c 204 § 606; 2005 c 467 § 1; 1995 c 397 § 31; 1993 c 2 § 20 (Initiative Measure No. 134, approved November 3, 1992); 1982 c 147 § 8; 1977 ex.s. c 336 § 3. Formerly RCW 42.17.095.]

**NOTES:**

**\*Reviser's note:** RCW 42.17.080(6) was recodified as RCW 42.17A.235(6) pursuant to 2010 c 204 § 1102. However, RCW 42.17.080 was also amended by 2010 c 205 § 6, changing subsection (6) to subsection (5).

**Effective date—2005 c 467:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2005]." [ 2005 c 467 § 2.]

**Severability—1977 ex.s. c 336:** See note following RCW 42.17A.205.

#### 2.04.375 - Reporting and disposition of campaign funds after election.

- A. 1. Each candidate or supporting committee for a candidate shall cease receipt of campaign contributions and dispose of the funds remaining in the campaign account in accordance with subsection B below, on or before the 30th day of April in the year following the date of the election for the office the candidate sought, except for special elections. In the case of a special election, each candidate or supporting committee for a candidate shall cease receipt of campaign contributions and dispose of the funds remaining in the campaign account, in accordance with subsection B below, on or before the 30th day of the fifth month after the special election for the office the candidate sought. By the tenth day of May in the year after the election for the office the candidate sought, each candidate or supporting committee for a candidate shall file a final report reflecting the disposition of the remaining funds, except for special elections. In the case of a special election, each candidate or supporting committee for a candidate shall file that final report by the tenth day of the sixth month after the special election for the office the candidate sought.
2. If a candidate or supporting committee for a candidate for City office has campaign debt outstanding on April 30th in the year following the date of the general election for the office the candidate sought, or on the 30th day of the fifth month after the special election for the office the candidate sought, the debt may be transferred to a new campaign of the same candidate for the same office.
3. Except for supporting committees for candidates that are governed by subsection A1 of this section and continuing political committees, each political committee (hereafter in this subsection A3 "committee") shall cease receipt of contributions and dispose of the funds remaining in the campaign account, in accordance with subsection B below, on or before the 30th day of April in the year following the date of the election for which the committee received contributions or made expenditures, except for special elections. In the case of a special election, each committee shall cease receipt of contributions and dispose of the funds remaining in the campaign account, in accordance with subsection B below, on or before the 30th day of the fifth month after the special election for which the committee received contributions or made expenditures. By the tenth day of May in the year after the election for which the committee received contributions or made expenditures, each committee shall file a final report reflecting the disposition of the remaining funds, except for special elections. In the case of a special election, each committee shall file that final report by the tenth day of the sixth month after the special election for which the committee received contributions or made expenditures.
4. Except for supporting committees for candidates that are governed by subsection A2 of this section and continuing political committees, if a political committee (hereafter in this subsection A4 "committee") has campaign debt outstanding on April 30th in the year following the date of the general election for which the committee received contributions or made expenditures, or on the 30th day of the fifth month after the special election for which the committee received contributions or made expenditures, the debt may be transferred to another political committee or to a continuing political committee, which shall, until such debt has been paid or forgiven, file the reports that would have been required of the committee transferring the debt had that committee not filed its final report under subsection A3 of this section.
- B. The surplus funds, including each capital asset for which the candidate or political committee paid \$200 or more, or reported as an in-kind contribution with a value of \$200 or more, may be disposed of only in one or more of the following ways:
1. Return the surplus to contributors in respective amounts not to exceed each contributor's original contribution;
  2. Transfer the surplus to the personal account of a candidate, or of a treasurer or other individual as reimbursement for lost earnings incurred as a result of the election campaign. Such lost earnings

shall be verifiable as unpaid salary or, when the candidate, treasurer or individual is not salaried, as an amount not to exceed income received by the candidate, treasurer, or individual for services rendered during an appropriate corresponding time period. All lost earnings incurred shall be documented, and a record thereof shall be maintained by the candidate, treasurer, or individual or by the political committee as the lost earnings accrue. The committee shall maintain such information as a part of the campaign records;

3. Transfer the surplus to a political party or to a caucus of the state legislature;
4. Donate the surplus to a charitable organization registered in accordance with RCW Chapter 19.09;
5. Transmit the surplus to the state treasurer for deposit in the general fund;
6. A candidate who was elected to the office sought, or that candidate's political committee, may transfer the surplus campaign funds to an account created under Section 2.04.480 for that individual's nonreimbursed expenses of that public office. This transfer shall be treated as a contribution for purposes of Section 2.04.480;
7. A ballot proposition political committee may become a continuing political committee and use the funds to support or oppose candidates and ballot propositions and must report in accordance with Sections 2.04.230 through 2.04.290.

(Ord. 124018, § 3, 2012; Ord. 123070, § 21, 2009; Ord. 120145 § 12, 2000; Ord. 118569 § 19, 1997; Ord. 117308 § 14, 1994.)



**Seattle Ethics and Elections Commission**  
**Elections Code Rules** (rev. 6/12)

**B. Exceptions to Sponsor ID Requirement.** Sponsor identification is required on all forms of political advertising except the following:

leaflets containing only the expressions of the person who drafts, distributes by hand and pays for the copying of them and who functions independently of any campaign. *McIntyre v. Ohio Elections Comm'n*, 514 US 334, (1995);

|  |   |  |
|--|---|--|
| ashtrays                                 | hats  | pinwheels                              |
| badges & badge holders                   | horns   | plastic tableware                      |
| balloons                                 | ice scrapers                                  | pocket protectors                      |
| bingo chips                              | inscriptions                                  | pot holders                            |
| brushes                                  | key rings                                     | reader boards with<br>moveable letters |
| bumper stickers (4" x 15" or<br>smaller) | knives  | ribbons                                |
| business cards                           | labels  | rulers (12" or smaller)                |
| buttons                                  | letter openers                                | shoe horns                             |
| cigarette lighters                       | magnifying glasses                            | skywriting                             |
| clothes pins                             | matchbooks                                    | staple removers                        |
| clothing                                 | nail clippers & files                         | stickers (2-3/4" x 1" or<br>smaller)   |
| coasters                                 | newspaper ads (one<br>column inch or smaller) | sun glasses                            |
| combs                                    | noisemakers                                   | sun visors                             |
| cups                                     | official state or local voter<br>pamphlets    | swizzle sticks                         |
| earrings                                 | paper & plastic cups                          | tickets to fund raisers                |
| emery boards                             | paper & plastic plates                        | water towers                           |
| envelopes                                | paper weights                                 | whistles                               |
| erasers                                  | paper weights                                 | yard signs                             |
| frisbees                                 | pencils                                       | yo-yo's and all similar items          |
| glasses                                  | pendants                                      |  |
| golf balls & tees                        | pennants                                      |  |
| hand-held signs                          | pens  |  |

**Rule 10 Prohibition Against Use of Public Office Facilities in Campaigns**

**A. Permissible Activities.** SMC 2.04.300 does not prohibit a City officer or employee from expressing his or her own personal views, as long as such expression does not involve the use of public facilities or publicly paid time (except vacation time); nor does it prevent a public office or agency from making facilities available on a non-discriminatory basis; nor does it prevent a public office or agency from making an objective and fair presentation of facts if that is part of its normal and regular conduct.

**Rule 11 Winding up a Campaign**

**A. Disposition of Surplus Funds and Assets.** The final C-4 must show the disposition of any surplus funds, or debt, and any capital asset (excluding funds) for which the campaign paid \$200 or more, or an in-kind contribution valued at \$200 or more, on a Schedule A, Schedule L or C-3, as appropriate. If the campaign disposes of such capital assets, it shall attach to the C-4 for the period a note describing the capital asset, date of purchase and name and address of the person or new political committee to which the committee transfers the capital asset. The final report must show a zero balance.

**Seattle Ethics and Elections Commission**  
**Elections Code Rules** (rev. 6/12)

**B. Transferring Surplus Funds or Capital Assets.**

1. The Executive Director will prepare a list of contributors whose contributions make up the surplus funds and capital assets available for transfer to another committee. The Executive Director shall begin with the most recent contributions to the candidate's committee, and work backwards chronologically until the aggregate of those contributors' contributions equals the amount of funds and capital assets on hand. Capital assets will be valued at their fair market value.

2. Before transferring funds or capital assets to a committee for a different office, a committee must secure written permission to do so from the contributors identified in the list prepared by the Executive Director. If a contributor does not grant permission to have his or her contribution transferred, the committee may not solicit a different contributor for permission unless that contributor is already on the list provided by the Executive Director and contributed funds that remain available to be transferred. A transferred capital asset does not count against any individual contributor's contribution limit; it is attributed to the transferring committee.

3. Whether transferred to a subsequent committee for the same office or a committee for a different office, transferred funds are considered contributions by the original contributor to the committee receiving the transfer, and count against the contributor's contribution limit. Surplus funds that are first deposited in a surplus funds account, and subsequently are transferred to a political committee, also count against the original contributor's contribution limit.

**C. Disposing of Campaign Debt.** A candidate committee with a debt may dispose of the debt, and then file a final report, in the following ways: (a) by receiving sufficient contributions to pay the debt; (b) by transferring the debt to a new campaign for the same office; (c) by obtaining agreement from the creditors to forgive the debt (such forgiveness is considered a contribution and contribution limits apply); or (d) by the candidate personally assuming any campaign debt and reporting such assumption as a contribution to his or her campaign.

**D. Transferring Debt.** Candidate, ballot issue, and independent expenditure committees may transfer loans, debts and other obligations to a new campaign for the same office or the same issue and the new campaign may assume such loans, debts or obligations. The following reporting rules shall apply to such a transfer and assumption:

**1. Transferring Loans.** The transferring committee shall report the transfer of a loan by filing a Schedule L with its final report that reports the loan as forgiven on line 3 of Schedule L. The transferring committee shall also file an amendment to the original C-3 reporting receipt of the loan. This amendment shall change the name of the lender from the name of the original lender, to the name of the new committee to which the loan is being transferred. In addition to the name of the new committee, this report shall include the new committee's address. Where the new committee is a candidate committee, the amendment shall also include the year in which the new committee's candidate will appear on the ballot. Where the new committee is a ballot issue committee, the amendment shall also include the word "new" after the committee name. Where the new committee is a continuing political committee, the amendment shall also include the word "continuing" after the committee name. The new committee shall report assumption of the loan by including a Schedule B with its initial C-4. It shall report the loan on line 3. Under "Vendor's/Recipient's Name and Address," the new committee shall report the name of the person who originally made the loan to the transferring committee.

**Seattle Ethics and Elections Commission**  
**Elections Code Rules** (rev. 6/12)

**2. Transferring Other Debts or Obligations.** The transferring committee shall include a note with its final report reporting that the debt or obligation has been transferred to the new committee, including the name and address of the new committee, the year in which the new committee's candidate or ballot issue will appear on the ballot, the name and address of the vendor, a description of the obligation, and the amount owed. The new committee shall report assumption of the debt or obligation by filing a Schedule B with its initial C-4 and reporting the debt or obligation on line 3.

**Rule 12 Maintenance and Inspection of Campaign Records**

**A. Records to be Maintained.** The following records must be maintained in the campaign files: copies of checks deposited into the campaign account; photocopies, or the hard copy equivalent, of checks withdrawing funds from the campaign account; paper copies of credit/debit card contribution receipts, attached to paper copies of the deposits of the credit/debit card contributions; invoices, receipts and other records of expenditures; records of reimbursements; contracts; bank records; communications with vendors and potential vendors; names and addresses of contributors; copies of disclosure reports; regulatory and licensing filings; accounting records; proof of compliance with Rule 6.A through 6.C; and any other written or electronic records of campaign activity.

**B. Availability of Records**

1. The following campaign records shall be available for public inspection during the eight days before the election: bank account statements, check registers, copies of or the hard copy equivalent of checks deposited into the account and copies of checks withdrawing funds from the account, copies of all deposit slips and invoices, paper copies of a spreadsheet or a ledger, or a method of viewing the copies if stored electronically. Committees must also provide one of the following, at the committee's discretion: (1) paper copies of electronic reports; (2) appropriate electronic viewing access to the reports; or (3) if the requestor provides a disk that is appropriately formatted to the committee's computer, a copy of the reports on the disk. To protect the confidentiality of contributors' financial information, the treasurer or deputy treasurer may remove checking account numbers and credit/debit card numbers from copies of documents placed on public display, so long as copies containing checking account numbers and credit/debit card numbers are retained.

2. On every day from the seventh day before an election through the day immediately before an election, other than Saturday, Sunday, or a legal holiday, campaign records must be available at the designated place for inspections (1) by appointment, and (2) for two hours, between 8:00 a.m. and 8:00 p.m. The appointment must be allowed at an authorized time and day for such inspections that is within 24 hours of the time and day that is requested for the inspection.

**C. Location of Records.** The location designated on the C-1 where the campaign records shall be open for public inspection shall not be changed within four weeks of the date of the election in which the candidate or issue shall appear on the ballot, except with written approval of the Executive Director. Every odd-numbered year, the Executive Director shall identify public facilities and their available hours in which the campaigns may display the campaign records during the eight days before the election.