

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

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SECTION 7. EXPENDITURES

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12. **Disclosure of top funders statements in paid public communications.** ~~If an entity makes an independent expenditure in excess of \$250 to influence a candidate's election, the public communication is required to contain the entity's top three funders under 21-A M.R.S. § 1014(2-B).~~ Disclosure statements required by 21-A M.R.S. § 1014 must meet the following placement, duration and content requirements, as applicable.

A. Placement must be clear and conspicuous. Disclosure statements must be clear and conspicuous. A statement is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked.

B. Television communications. ~~The Disclosure statements included~~ in a public communication made through cable, satellite, or broadcast television must conform with those portions of federal regulations 47 CFR § 73.1212(a)(2)(ii) and 47 CFR § 76.1615(a) which regulate text size and duration of sponsorship information. Specifically

- (1) the font size must be equal to or greater than four percent of the vertical picture height, and
- (2) the text must appear for not less than four seconds.

C. Other visual communications. For public communications ~~listed in 21-A M.R.S. § 1014(2-B)~~ with a visual aspect other than television or video communications, the disclosure ~~statement-of funders~~ must appear in a font size that is 12-point or larger.

DC. Disclosure of top three funders in independent expenditure communications. ~~If an entity makes an independent expenditure in excess of \$250~~ \$1,000 per candidate to influence a candidate's election, the public communication is required to contain the entity's top three funders under 21-A M.R.S. -§ 1014(2-B).

- (1) If the public communication is funded by a political action committee that is a separate or segregated fund as defined in 21-A M.R.S. -§ 1052(5)(A)(1), but not a separate legal entity, the top three funders to be listed are the top three funders of the legal entity (corporation, membership organization, cooperative or labor or other organization) that established the fund.
- (2) ~~D~~ If the public communication is funded by a political action committee that is fully funded or controlled by another political action committee or legal entity, the top three funders to be listed are the top three

funders of that entity that fully funds or controls the political action committee.

(3E) For any other political action committee that does not fall within the parameters of paragraphs C or D, the top three funders are the contributors who have given the top three aggregate contributions, as defined in 21-A M.R.S. § 1052(3), during the time period specified in 21-A M.R.S. § 1014(2-B)(A).

(4) Public communications for which including the statement required by 21-A M.R.S. § 1014(2-B) would be impossible or impose an unusual hardship due to their format or medium are exempt from the requirements of that section.

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## SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes any independent expenditure in excess of ~~\$250~~\$1,000 per candidate in an election must file a report with the Commission according to this section.
2. **Definitions.** For purposes of this section, the following phrases are defined as follows:
  - A. "Clearly identified," with respect to a candidate, has the same meaning as in 21-A M.R.S. § 1012(1).
  - B. "Expressly advocate" means any public communication that
    - (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or public communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or
    - (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.
  - C. "Independent expenditure" has the same meaning as in 21-A M.R.S. § 1019-B. Any expenditure made by any person in cooperation, consultation or concert

with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.

3. **Reporting Schedules.** Independent expenditures in excess of ~~\$250~~\$1,000 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following schedule:

A. *[Repealed]*

B. *[Repealed]*

- (1) **60-Day Pre-Election Report.** A report must be filed by 11:59 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.
- (2) **Two-Day Report.** From the 60<sup>th</sup> day through the 14<sup>th</sup> day before an election, a report must be filed within two calendar days of the expenditure.
- (3) **One-Day Report.** After the 14<sup>th</sup> day before an election, a report must be filed within one calendar day of the expenditure.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.

- C. Reports must contain information as required by 21-A M.R.S. §§ 1016-1017-A, and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate.
- D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a public communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the public communication. If the approximate number of voters in each district who will receive the public communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT,

THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS:  
50% FOR X, 20% FOR Y, and 30% FOR Z.]

- B. If multiple county or legislative candidates are named or depicted in a public communication, but voters in some of the candidates' electoral districts will not receive the public communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

5. **Requests for an Independent Expenditure Determination.** Under 21-A M.R.S. § 1019-B(1)(B), an expenditure made to design, produce or disseminate a public communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days before a primary election, the 35 days before a special election or from Labor Day to the general election is an independent expenditure, unless the person making the expenditure demonstrates to the Commission that the expenditure did not have a purpose or effect of influencing the nomination, election or defeat of the candidate.
- A. The following types of public communications may be covered by 21-A M.R.S. § 1019-B(1)(B):
- (1) Advertisements in newspapers and other print media;
  - (2) Broadcast, cable, or satellite advertisements;
  - (3) Direct mail, handbills, and other printed literature;
  - (4) Prerecorded automated telephone messages;
  - (5) Communications placed or promoted for a fee on another person's website, digital device, application or advertising platform in order to increase the circulation, prominence or availability of the communication on that website, digital device, application or advertising platform; and
  - (6) Other types of general public political advertising.
- B. The following types of public communications and activities are not covered by 21-A M.R.S. § 1019-B(1)(B):
- (1) news stories and editorials, unless the facilities distributing the public communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;
  - (2) activity or public communications designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;

- (3) any public communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;
  - (4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and
  - (5) other public communications and activities that are excluded from the legal definition of “expenditure” in the Election Law.
- C. If an expenditure is covered by 21-A M.R.S. § 1019-B(1)(B) and is greater than ~~\$250~~\$1,000 per candidate per election, the person making the expenditure must file an independent expenditure report or request a determination by the Commission that the cost of the public communication is not an independent expenditure. The person may make the request by submitting a signed written statement that the expenditure did not have a purpose of, and will not have an effect of, influencing the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsection 3(B) of this rule. Any independent expenditure of ~~\$250~~\$1,000 or less per candidate per election does not require the filing of an independent expenditure report or a rebuttal statement.
- D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable date of dissemination for purposes of 21-A M.R.S. § 1019-B(1)(B) is the date on which the public communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.
- E. For the purposes of determining whether a public communication is covered by 21-A M.R.S. § 1019-B(1)(B), the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.
- F. An organization that has been supplied printed public communications covered by 21-A M.R.S. 1019-B(1)(B) and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the public communications has already reported the costs of the materials to the Commission. If the actual costs of the public communications cannot be determined, the organization distributing the public communication to voters must report the estimated fair market value.
- G. Persons requesting a determination that no independent expenditure report is required are encouraged to submit their requests early, if possible before making the expenditure for the public communication. The request must include the complete public communication and be specific as to when and to whom the public communication will be disseminated.
- H. The Commission’s Director shall make an initial determination by a preponderance of the evidence whether the cost was incurred with a purpose of, or had the effect of, influencing the nomination, election or defeat of a candidate

in accordance with 21-A M.R.S. § 1019-B(2). Any person may appeal the Director's determination to the Commission within two days of their receipt of the determination or the posting of the determination to the Commission's website, whichever is earlier.

- I. If the Director or Commission determines that an independent expenditure report was required and the report is not filed by the deadline in subsection 3(B), the late-filing penalty in 21-A M.R.S. § 1020-A shall apply. The late filer may pay the penalty or request a waiver. In the alternative, the Director or Commission may, for good cause, extend the deadline to file the report for a short period after the determination sufficient for the person to file the report without delay. If the report is filed within the extension period, the report will be considered on time.