



STATE OF LOUISIANA
DEPARTMENT OF STATE CIVIL SERVICE
LOUISIANA BOARD OF ETHICS
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February 19, 2021

VIA Email and Regular Mail

The Honorable John Bel Edwards
Governor, State of Louisiana
P. O. Box 94004
Baton Rouge, LA 70804-9004

The Honorable Patrick Page Cortez
President, Louisiana State Senate
P. O. Box 94183
Baton Rouge, LA 70804

The Honorable Clay Schexnayder
Speaker, Louisiana House of Representatives
P. O. Box 94062
Baton Rouge, LA 70804-9062

The Honorable Sharon Hewitt
Chairperson, Senate and Governmental Affairs
P.O. Box 94183
Baton Rouge, LA 70804

The Honorable John M. Stefanski
Chairman, House and Governmental
Affairs Committee
P. O. Box 94062
Baton Rouge, LA 70804

Re: 2021 Recommendations by the Louisiana Board of Ethics

Dear Governor Edwards, President Cortez, Speaker Schexnayder, Sen. Hewitt and Rep. Stefanski:

Pursuant to R.S. 42:1134(J), the Louisiana Board of Ethics is directed to make recommendations to the Legislature and the Governor for revisions to the laws it administers. After due consideration, the Board unanimously adopted the following recommendations and suggestions at its February 5, 2021 meeting.

With respect to those matters involving the Campaign Finance Disclosure Act (La. R.S. 18:1481, et seq.), the Board made the following suggestions:

1. Definition of "political committee"
 - Current definition in R.S. 18:1483(14)(a)(i) provides that a political committee is "two or more persons, other than a husband and wife, and any corporation organized for the primary purpose of . . ."
 - This would exclude other legal entities in which there is a single member, such as a limited liability company. The Board suggested that the law be amended to account for other types of legal entities that may be organized for the primary purpose of supporting or opposing candidates, propositions, recalls of a public officer, or political parties.
2. Email information
 - Currently, the Secretary of State through registered voter information can obtain email addresses. However, under current law, the Board of Ethics does not have access to that

information. Having access to email addresses would allow the Board of Ethics to send courtesy reminders about filing deadlines, request amendments correcting errors on reports, and providing other information to filers.

- The Board suggested that R.S. 18:154C(2)(b) be amended for to allow the Secretary of State's Office to provide email addresses of candidates to the Board of Ethics, in a similar manner in the way the Board of Ethics receives dates of birth and last four of social security numbers of candidates.

With respect to those matters involving the Code of Governmental Ethics (La. R.S. 42:1101, et seq.), the Board made the following suggestions:

1. Personal Financial Statements

- Currently, no late fees can be assessed until 7 business days from receipt of a notice. In order for the Board of Ethics to know when a late filer has received it, the notices are sent by certified mail, return receipt requested. If certified mail is returned unclaimed, the notice is then served using the paid services of the local sheriff. It is costly and time consuming sending certified mail/subpoenas for such notices.
- The Board suggested changing the law to remove the "from receipt" requirement. A suggestion would be that no late fee can be assessed unless the filer has not filed within a certain time frame from the Board's mailing of the letter to the last known address of the filer.

2. Training (Lobbying)

- Currently, lobbyists are required to take training annually on the provisions of the Code of Governmental Ethics.
- The Board suggested changing the law to provide that a lobbyist cannot renew their registration, until the training requirement is satisfied.

The Board wanted to reiterate its recommendations from last year. They are as follows.

With respect to those matters involving the Campaign Finance Disclosure Act (La. R.S. 18:1481, et seq.), the Board made the following suggestions:

1. Special Reports – Current law (R.S. 18:1491.6C and 18:1495.4C) requires political committees and candidates to file Special reports during the 20 day period prior to an election disclosing certain contributions and expenditures within 48 hours of the occurrence of those transactions. The following transactions require the filing of a Special report:
 - Contributions received in excess of:
 - \$1,000 for a major candidate or a political committee participating in an election thereof;
 - \$500 for a district candidate or a political committee participating in an election thereof;
 - \$250 for any other office candidate or a political committee participating in an election thereof;
 - Expenditure made in excess of \$200 made to a candidate, committee, or person required to file reports, who makes endorsements.

The amounts that trigger the filing requirements have been in existence for at least three decades. Given the inflation increase over the years, the Board recommended the increase of

the threshold in the following amounts:

- Contributions in excess of:
 - \$750 for a district candidate or a political committee participating in an election thereof;
 - \$500 for any other office candidate or a political committee participating in an election thereof;
- Expenditure in excess of \$500 made to a candidate, committee, or person required to file reports, who makes endorsements.

2. Special Reports - As stated earlier, Special reports are required to be filed within 48 hours of the occurrence of those transactions mentioned above. (R.S. 18:1491.6C(3) and 18:1495.4C(3)) The Board suggested that the 48 hour filing requirement be changed to “within 2 business days after the occurrence” of the above transactions. This will provide clarity to filers as to when the reports must be filed with the Board, as well as assist the Board’s staff in determining when the report is due.

3. Election Day Expenditure Reports - Currently, R.S. 18:1532 requires the disclosure of certain expenditures on a report filed 10 days after the election day. The expenditures that trigger the filing requirement are those made for television, radio and newspaper ads broadcast or published on election day; for services by election day workers; to organizations for election day activities or services in support or opposition of a candidate; and, for automated calls using prerecorded or artificial voice occurring on election day. The Board discussed whether there was a utility to these reports as these expenditures are also reported on the comprehensive report that covers the time period in which the expenditure was made. Based on this fact, the Board recommends to the Legislature that consideration be given to deleting the requirement to file Election Day Expenditure Reports pursuant to R.S. 18:1532.

With respect to those matters involving the Code of Governmental Ethics (La. R.S. 42:1101, et seq.), the Board made the following suggestions:

1. Tier 3 Personal Financial Disclosures - Current law for the filing of Tier 3 personal financial disclosure statements (PFDs) provides that a late fee of \$50 per day, “shall be” assessed for each day that a report is not timely filed. R.S. 42:1124.4C(3). The maximum late fee for Tier 3 filers is \$1,500 per report. R.S. 42:1157A(4)(b). Tier 3 PFDs are filed by charter school board members and elected officials from a district with a population less than 5,000. R.S. 42:1124.3. The Board suggested that the amount of the penalty with respect to Tier 3 filers be lowered to \$25 a day, with a maximum of \$500 per report.
2. Personal Financial Disclosures - Current law requires that if a person fails to file a PFD, fails to provide omitted information or correct inaccurate information, or fails to file an answer, he/she “shall” be subject to late fees as provided in R.S. 42:1124.4C. R.S. 42:1124.4B(2). The Board suggests that the mandatory language of “shall” used in these sections with respect to the assessment of penalties for all PFD filers be changed to “may.”
3. False statements made by candidates - Current law in R.S. 42:1130.4 provides that “[n]o candidate in an election shall, with the intent to mislead the voters, distribute or cause to be distributed any oral, visual, or written material containing any statement which he knows makes a false statement about another candidate in an election.”

In Ethics Adjudicatory Board Docket No. 2011-6158-ETHICS-A, *In the Matter of Donald Villere*, the Ethics Adjudicatory Board (EAB), which is the panel of administrative law judges that conduct hearings on

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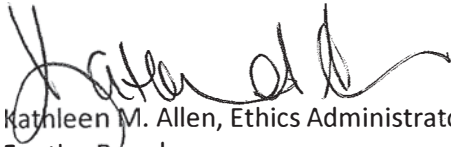
charges filed by the Board of Ethics, concluded that “the standard of actual knowledge is higher than the actual malice standards for defamation of a public figure, such as reckless disregard of the truth, a high degree of awareness of the probable falsity, and entertaining serious doubts about one’s statements.” *In re Villere*, p. 20. Further, the EAB acknowledged that the “standard of actual knowledge is also higher than some statutory standards, such as the “should be reasonably expected to know” standard listed in other statutes.” *In re Villere*, p. 20-1.

The Board suggests that the burden of proof in R.S. 42:1130.4 include “know, or should be reasonably expected to know,” rather than only the standard of having to provide actual knowledge.

Thank you for your consideration of the Board of Ethics’ recommendations. Please feel free to contact me or Kristy Gary, Deputy Ethics Administrator at (225) 219-5600 to discuss or provide you with further information related to these recommendations.

Respectfully,

LOUISIANA BOARD OF ETHICS

A handwritten signature in black ink, appearing to read 'Kathleen M. Allen', written over a printed name and title.

Kathleen M. Allen, Ethics Administrator
For the Board

cc: Members of the State Legislature (via e-mail)