

Ethics and Campaign Filing

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Advancing Georgia's Counties.

Overview

Part I

- Review of the Filing Process
- Understanding the Exemption Affidavit
- Election Cycle vs. Election Year

Part II

- Filing the Final Termination Statement & CCDR
- Fines
- New Commission Rules
- Agency Rule vs. State Statute
- Looking Ahead
- Resources

Part I

“The pleasures arising from thinking and learning will make us think and learn all the more.” ~ Aristotle, Nicomachean Ethics

Review of Filing Process

- What Forms Are Filed Locally?
 - Declaration of Intent (DOI)
 - Exemption Affidavit
 - Campaign Contribution Disclosure Statement (CCDR)
 - Personal Financial Disclosure Statement (PFD)
 - Final CCDR and Termination Statement
 - Affidavit of Incumbent Not Seeking Reelection
 - Two Business Day Report
 - **By law, the RC and ROC forms are still filed w/ the Commission per O.C.G.A. 21-5-30(b) & COOSA forms per O.C.G.A. 21-5-43(a)(2)**
- Filing Schedule
 - Election Year: Jan. 31, Mar. 31, June 30, Sept. 30, Oct. 25, Dec. 31
 - Non-election Year: Jan. 31, June 30
 - Run-off: 6 days before primary or general run-off election
 - Special: 15 days prior to special primary or general & 6 days prior to run-off

Review

- Who Files Locally?
 - Per **O.C.G.A. 21-5-3(22)(F)**- every elected county official and every elected member of a local board of education, and **(G)** every elected municipal official.
 - **O.C.G.A. 21-5-34(a)(2)(A)**, any campaign committee designed to bring about the approval or rejection by the voters of any proposed question which is to appear on the ballot in a county or municipal election, provided they raise or spend > \$500
 - Report shall be filed 15 days prior to date of the election and a final report prior to 12/31 of the election year.
- How Do They File?
 - Methods: certified mail, statutory overnight delivery, personal delivery, or eFiling if available (**O.C.G.A. 21-5-34.1(c)**).
 - **O.C.G.A. 21-5-34(a)(3)&(4)** states: the candidate, or chairperson or treasurer of candidate's campaign committee shall sign and file reports with the Election Superintendent or municipal clerk.

Understanding the Exemption Affidavit

- **O.C.G.A. 21-5-34(d.1)(1), (2), and (3)** provides for the authorization of local public officials to file an affidavit of intent not to exceed contribution and expenditure thresholds in exchange for filing fewer CCDRs.
- Who Can File?
 - Local Public Officials as defined by **O.C.G.A. 21-5-3(22)(F) & (G)**
 - Can also be filed by the chairperson or treasurer of the candidate's campaign committee
 - Includes: Candidates, Incumbents seeking reelection, & Public Officials
- When Can They File?
 - At any time. There is no deadline for the Exemption Affidavit
 - However, it is only valid from the date of filing moving forward, not retroactive
- How do They File?
 - Same manner as the CCDR

Understanding the Exemption Affidavit

- If I File the Exemption Affidavit, Do I Still Have to File...
 - a PFD, Two Business Day Report, or Final Termination & CCDR? **YES!**
 - The Exemption Affidavit **ONLY** applies to the CCDR
- Thresholds:
 - Based on an election cycle **NOT** term of office, election year, or calendar year
 - < \$2,500
 - \$2,500-5,000
 - > \$5,000

Understanding the Exemption Affidavit

- CCDR Filing Schedule w/ Exemption Affidavit on File*
 - < \$2,500: No required filing deadlines
 - \$2,500-5,000: June 30th and October 25th (regardless of whether it is an election year or non-election year, **Proposed Rule 189-3-.01(7)**)**
 - Election year: file amendment to 10/25 report for items b/w 10/25-12/31 (**Proposed Rule 189-3-.01(6)**)
 - > \$5,000: Subject to full filing schedule under **O.C.G.A. 21-5-34(c)**

**Exemption Affidavit must be on file by the due date in order to exempt the candidate/public official from that CCDR report.*

***Proposed Rule 189-3-.01(5) requires CCDR reports filed once a candidate/official exceeds the \$2,500 threshold to report all contributions and expenditures dating back to January 1st of that year. (Adopted on March 26, 2015)*

Election Cycle vs. Election Year

Election Cycle

- **O.C.G.A. 21-5-3(10)**: is the period from the day following the date of an election or appointment of a person to elective public office through and including the date of the next such election of a person to the same public office and shall be construed and applied separately for each elective office.

Election Year

- **O.C.G.A. 21-5-3(11)**: means for each elective office the calendar year during which a regular or special election to fill such office is held.

Election Cycle

Example 1:

- Candace Candidate is elected on 11/4/14 for Blackacre County Commission District 2 for a 4 year term. In 2018, Candace wins her primary in May and has no opposition in the general election which will be held on 11/6/2018. **When does Candace's election cycle end?**

Example 2:

- Eddy Educator is elected to Greenacre County School Board on 5/20/14 for a 4 year term. In 2018, Eddy successfully completes his bid for reelection during the 5/23/18 election and since it is a nonpartisan school board, there is not a subsequent election to be held in November. **When does Eddy's new election cycle begin?**

Election Cycle Questions

- How do we know which election restarts the election cycle?
- Does the candidate/official have to file a new Exemption Affidavit?
- Does the threshold for the Exemption Affidavit restart when a new election cycle begins?
- If a candidate went over the \$5,000 threshold prior to his November election, does he still have to file the 12/31 CCDR?
- What if the candidate accepts contributions after the election to pay off debt incurred prior to the election?
- If a 12/31 CCDR is owed, does the candidate still carry forward expenditures and contributions through the remainder of the calendar year?

Election Cycle Questions

- So, a candidate can raise/spend money for public office up until the general election date, and the money he/she raises or spends will not be counted toward their election cycle for the office in which the money was raised or spent to elect them?



Part II



Final Termination & CCDR

O.C.G.A. 21-5-34(m): states in part that a termination statement together with its final CCDR, as required by law, shall be filed within 10 days of the dissolution of a campaign or committee. The termination statement shall identify the person responsible for maintaining campaign records.

- What constitutes a dissolution?
 - Bringing the campaign account balance to zero
 - Excess funds can be disposed of per **O.C.G.A. 21-5-33(b)(1)**
 - Satisfying any outstanding debts
 - Can't be in office
 - Can't be seeking the same office

Officials Leaving Office

- **O.C.G.A. 21-5-34(i)(1)**- requires officials leaving public office to file supplemental CCDRs on June 30th and December 31st of each year until excess funds are expended and debts are satisfied.
- If the official leaves office during their term, they must follow the CCDR filing schedule for that office through the end of the year.
 - Assuming campaign account is dissolved, cannot file Final Termination & CCDR prior to 12/31
- If the official resigns office, they can file the Final Termination and CCDR once the campaign account is dissolved.
 - Is subject to the 10 day reporting deadline from dissolution.

Unsuccessful Candidates

- **O.C.G.A. 21-5-34(i)(2)**- requires unsuccessful candidates in an election to file supplemental CCDRs no later than 12/31 of each year until the campaign account has been dissolved.
- If a candidate is unsuccessful in a May primary and has dissolved their campaign account, they must wait until the 12/31 reporting deadline to file the Final Termination and CCDR.
 - Any time after, the unsuccessful candidate must file the Final Termination & CCDR within 10 days of dissolution of the campaign account.
 - Candidate is subject to the applicable filing schedule in the interim

Fines

O.C.G.A. 21-5-34(k)(1)- provides for the following fine and notice requirements for late and/or non-filers:

- Notice of Non-Filing- shall be sent to the candidate and the candidate's campaign committee by certified mail return receipt requested.
- Notice of Late-Filing- shall be sent to candidate and their campaign committee in same manner as report was filed, i.e., eFiling or certified mail return receipt requested.
- Notice Shall Include:
 - Schedule of increasing late fees and the dates upon which such late fees shall be increased

Fine Schedule

Fine Schedule

- \$125 after grace period
- Additional \$250 on 15th day
- Additional \$1,000 on 45th day
- Max amount per late filing is \$1,375

**Any increase in late fees shall be stayed until at least 10 days after proper notice has been given*

Grace Periods

- CCDR
 - 5 business days
- Run-off
 - 2 business days
- Two Business Day Report
 - No grace period
- Final Termination & CCDR
 - 10 days of dissolution of campaign
 - Commission does not issue fine for this report
- PFD
 - Election year: 15 days of qualifying
 - Nonelection year: July 1 (no grace period)

Fine Questions

- Do I have to send a notice out each time the fine increases?
- What if they don't pay?
- What enforcement do we have?
- Who gets the fine revenue?
- What if we don't get the notice out until 45 days after the due date, is their fine \$1,375? Or \$125?

Proposed Commission Rules

189-3-.08 Assistance by Local Filing Officers

- Local filing entities may render assistance if it is ordinary and in the course of performing their regular duties.

189-3-.09 eFiling of 2 Business Day Report w/ Local Filing Entity

- Local candidates who file a Two Business Day report via fax with their local filing entity must file w/in 5 business days thereafter a Two Business Day report electronically pursuant to the local filing entities' own rules.

189-3-.10 Transmission of DOI by Local Filing Entity

- Local filing entities must transmit a candidate's DOI w/in 10 days of it being filed.

****All above referenced rules were adopted on March 26, 2015***

Proposed Amendments to Commission Rules

189-3-.01(4)(a) CCDR

- Person in a primary election must file the June 30th CCDR, and the January 31st CCDR of the immediately following year of the election.
- Candidates who file a DOI but do not qualify may file a Final Termination & CCDR w/in 10 days of dissolution of their campaign.

189-3-.01(8) CCDR

- Candidates in special elections must file a Dec. 31st CCDR

189-1-.08 Retention Schedule

- Greater of 5 years from the date received by local filing officers, date candidate's campaign is dissolved, or from the time candidate leaves office.

****All above referenced rules were adopted on March 26, 2015***

Rule vs. Statute

- What is the purpose of an agency rule or regulation?
 - The purpose is to address an ambiguity or absence of guidance in the law that clarifies how a certain provision is to be implemented.
 - Such rule or regulation should not substantively change the intent of a provision but rather provide clear guidance on how to implement it.
 - Benefit of rule or regulation is that when a need arises for guidance, a rule or regulation can be promulgated much quicker than waiting for the next legislative session to make statutory changes.
- What happens if an agency rule is in direct conflict with a state statute?
 - Any agency rule or regulation in direct conflict with a state statute shall be superseded by the statute.
 - Repealing a rule in conflict with a state statute requires action by the agency board, or a challenge by a person with standing to overturn the rule based on its conflict with a statute.

Looking Ahead

Potential Changes

- Amend law to have local candidates file their RC, ROC, and COOSA forms with the local filing officer
- Amend filing schedule to reflect changes in election dates as well as clarify non-election year filing dates for candidates/officials between \$2,500-5,000 threshold.
- Additional changes to Exemption Affidavit dealing with election cycle
- Other items and technical clean-up

2016 Election Year

- Compressed election calendar again!
- Petition Commission now for proposed rules necessary to improve the process for the next election



Resources

ACCG

- www.accg.org/ethics

GGTCFC

- Forms: <http://ethics.ga.gov/filer-information/forms/>
- Campaign Finance Act:
<http://ethics.ga.gov/lawsrules/campaign-finance-act/>
- Agency Rules & Regulations:
<http://ethics.ga.gov/lawsrules/cfc-rules/>

Georgia General Assembly

- Legislation Search/ Georgia Code Online:
<http://www.legis.ga.gov/en-US/default.aspx>



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"Opportunity is missed by most people because it is dressed in overalls and looks like work." ~ Thomas Edison