

Top 10 Things You Should Know Before You Run for Public Office

The legal profession is comprised of leaders, so it is not surprising that some attorneys flirt with the idea of running for public office at some point in their careers. No other profession holds such a high proportion of the positions of authority in our government.¹ After all, lawyers are the only people who control an entire branch of government — the judiciary — and hold most of the positions in the other two branches. However, before you throw your hat into the ring and declare yourself a candidate, you should know the following.

Appointment of Campaign Treasurer and Designation of Campaign Depository

Candidates should file an Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates (Form DS-DE 9) with their filing officer *before* the candidate accepts contributions or makes any expenditure.² Unfortunately, many candidates end up violating the election code because they open their campaign bank accounts and contribute to their own campaign prior to filing Form DS-DE 9. Candidates should remember that Form DS-DE 9 is not considered filed once it is mailed; it is considered filed once the filing officer receives it.³

Sufficient Funds on Deposit

Even if a candidate never bounces a check and timely pays all vendors, he or she can violate the election law because no candidate or agent of the candidate may authorize any expense or sign a check drawn on the campaign

depository unless there are sufficient unencumbered funds on deposit in the primary depository account.⁴ The date the expense is *incurred* and the date the check is written are important.⁵ For example, a candidate would violate F.S. §106.11(4) if he or she ordered the printing of campaign fliers for \$2,000 with only \$500 in his or her campaign account — even though he or she paid for the fliers with a check two weeks later when he or she had \$3,000 of unencumbered funds in the campaign account. A candidate would also violate F.S. §106.11(4) if he or she wrote a \$1,000 check today with only \$800 in his or her account, even if the check is not returned for insufficient funds. Candidates should keep in mind that they can be held responsible for these errors even if the errors are made by their campaign treasurers.⁶

Excessive Contributions

Candidates should pay close attention to contribution limits. Contributions to candidates made by check, credit card, or debit card⁷ cannot exceed \$500 from any one person, per election⁸ as long as the candidate is running with opposition.⁹ A person may also make a contribution up to \$500 per election by money order as long as the name, address, and other required information is reported.¹⁰ A primary election and the general election are considered two separate elections.¹¹ If someone wishes to contribute \$500 to a candidate for the primary and an additional amount for the general election, the contributor must wait until after the primary election takes place before making the second

contribution up to \$500.¹² If a check is written on a joint checking account, the contribution is from the person who signs the check.¹³ Therefore, if someone with a personal account and a joint account signs a check for \$500 from both accounts, it would be considered an excessive contribution. This is true, even if the other person from the joint account does not contribute anything to the campaign.

Limits for contributions made by children¹⁴ or via cash and cashier's check are lower.¹⁵ Candidates may not accept more than \$100 per election from an unemancipated child under 18 years of age.¹⁶ If a contributor pays with cash or cashier's check, the candidate cannot accept more than \$50 from that individual per election.¹⁷

Late Filing

Candidates are required to file periodic reports of contributions received and expenditures made during the reporting period.¹⁸ A report is considered "filed" if received by the local filing officer no later than 5:00 p.m. on the designated date or postmarked by the U.S. Postal Service no later than 11:59 p.m. on the designated date.¹⁹ If the Division of Elections is the filing officer, the report should be filed electronically no later than 11:59 p.m. on the designated due date.²⁰ If the filing officer determines a report is incomplete, the filing officer can accept the report on a conditional basis and require the candidate to file an addendum to the report to correct any omissions within three days.²¹

A candidate and the campaign treasurer must certify that each report is true, correct, and complete.²² Reports

are due on the 10th day following each quarter. However, reports are filed more often when there are 32 days or less remaining prior to an election.²³ A candidate can be fined for failing to file a report on time. The fine is \$50 per day for the first three days that a report is not filed and \$500 for each day thereafter, not to exceed 25 percent of total receipts and expenditures, whichever is greater.²⁴ If, however, the report is the last one prior to an election, the fine is \$500 per day, not to exceed 25 percent of total receipts and expenditures, whichever is greater.²⁵ Candidates may appeal a fine to the Florida Elections Commission.²⁶

Independent Expenditures

Independent expenditures are expenditures made for advocating the election or defeat of a specific candidate, independently of the candidate.²⁷ The expenditure cannot be controlled, coordinated, or in consultation with the candidate or an agent of the candidate.²⁸ Anyone who makes combined independent expenditures of \$5,000 or more is required to file a report of these expenditures.²⁹

In-kind Contributions

In-kind contributions are defined as anything having an attributable monetary value in any form, given for the purpose of influencing the results of an election or making an electioneering communication.³⁰ Unfortunately, candidates often forget to report in-kind contributions. These include contributions for website hosting, printing services, fundraising location rentals, etc. Additionally, in-kind contributions are still limited by the \$500 contribution limit discussed above.³¹ Therefore, the aggregate of a check contribution and an in-kind contribution cannot exceed the \$500 limit.³² Some professional personal services are exempt from the in-kind reporting requirement. These exempted professional personal services include, but are not limited to, legal and accounting services voluntarily provided without compensation.³³

Political Advertising and Endorsements

In 2010, the Florida Elections Com-

mission found probable cause for political advertising violations for nearly one-third of its caseload.³⁴ Candidates are often in violation because they fail to include a disclaimer on all of their advertising or fail to use the proper wording in their advertisements.

All paid political advertisements expressly advocating for a candidate should have a disclaimer. That means all radio, television, newspaper, magazine, billboard, robotic telephone calls, Internet, and direct mail advertisements should include the proper statutory language.³⁵ The exact wording of the disclaimer is contingent on who pays for the advertisement, how the advertisement is paid, and whether the candidate is running for partisan office.³⁶ Many candidates forget that their letterhead, campaign websites, and social media websites contain words of express advocacy,³⁷ and that these communication mediums may be considered political advertisements, which require specific disclaimer language.³⁸

Candidate political advertisements often contain abbreviations and fail to have the *exact* word-for-word language spelled out in statute.³⁹ The candidate's first and last name should be spelled out completely, and partisan candidates should spell out the party name rather than use previously acceptable abbreviations like "R" or "D." Candidates with no party affiliation should specifically state this in their disclaimer, and nonpartisan candidates should not reference a party affiliation in their disclaimer.⁴⁰ Additionally, nonincumbent candidates should use the word "for" between their name and the office for which they are running.⁴¹

Candidates need to make sure they have received specific approval in writing from the people and organizations that endorse them *before* they advertise these endorsements.⁴² However, candidates do not need to worry about this requirement when it comes to editorial endorsements from recognized news mediums and publications by a party committee advocating for the candidacy of its nominees.⁴³

Florida Elections Commission and Division of Elections

Two separate and independent state agencies regulate election laws in Florida: the Florida Elections Commission (FEC or "commission") and the Division of Elections (DOE).⁴⁴

The FEC enforces the provisions of F.S. Chs. 104 and 106⁴⁵ and is administratively housed within the Office of the Attorney General.⁴⁶ However, the commission is a separate budget entity and is not subject to the control, supervision, or direction of the attorney general.⁴⁷ The FEC is comprised of nine commissioners appointed by the governor.⁴⁸ The governor appoints all the members, except the chair, from lists of names provided to him by the president of the Senate, the speaker of the House of Representatives, and the minority leaders of both houses.⁴⁹ The chair of the commission serves for a maximum of four years with his or her term running concurrently with the term of the appointing governor.⁵⁰ The members of the commission may serve no more than two full terms of four years, and no more than five commissioners can be from the same political party at any one time.⁵¹ The commissioners appoint an executive director,⁵² who supervises a staff including a general counsel, several investigators, and a commission clerk.

The FEC is not permitted to give advisory opinions.⁵³ Additionally, the FEC does not have jurisdiction over how elections are run, how votes get counted, or candidate qualifying issues.⁵⁴ These are all within the jurisdiction of the DOE.⁵⁵

The DOE is a division within the Department of State that provides guidance on election laws.⁵⁶ The DOE prescribes forms for statements and other information required by F.S. Ch. 106, and publishes manuals explaining a candidate's obligations of reporting contributions received and expenditures made.⁵⁷ Candidates should read these manuals and follow the examples given. The DOE is the filing officer for all statewide, multi-county, and circuit court judicial candidates,⁵⁸ and can refer cases to the FEC for enforcement related to election code violations.⁵⁹ However, it usually refers cases when an indi-

vidual has failed to file the necessary campaign finance reports or when the reports are filed late.⁶⁰

Campaign Handbook/Advisory Opinions

Candidates are required to sign a form declaring that they have received, read, and understand F.S. Chs. 104 and 106 before qualifying for office. If the candidate has a question about his or her campaign, he or she should contact the DOE immediately to get advice.⁶¹ The candidate can request an advisory opinion from the DOE as long as the candidate puts the request in writing and complies with Rule 1S-2.010 of the Florida Administrative Code.⁶²

FEC Complaint Process

Anyone can file a complaint alleging a violation of F.S. Ch. 104 or 106 with the Florida Elections Commission.⁶³ All complaints must be sworn, signed, notarized, and based on personal information or information other than hearsay.⁶⁴ Because of these requirements, the FEC will not accept anonymous complaints. Once a properly sworn complaint is received, the executive director determines if the case is legally sufficient so that staff can conduct a preliminary investigation.⁶⁵ Once the investigation is complete, FEC attorneys make a staff recommendation to the commissioners, who determine if probable cause exists for the case to go forward.⁶⁶

Conclusion

Candidates should surround themselves with individuals who know the elections process. They should file reports timely, put procedures in place so that all contributions and expenditures are properly documented, and remember to include disclaimers on their advertisements. Candidates should refer to their campaign handbooks often and pose any questions they have about the process to the DOE.

Running for public office is a noble undertaking, and candidates should take some time to familiarize themselves with Florida's election laws so that they can avoid an election law violation. □

¹ Neil W. Hamilton, *Ethical Leadership in Professional Life*, 6 U. ST. THOMAS L. J. 358, 361-62 (2009); Deborah L. Rhode, *Lawyers and Leadership*, 20, 3 PROF. LAW. 1 (2010).

² FLA. STAT. §106.021 (2010).

³ FLA. DIV. OF ELECS., CANDIDATE AND CAMPAIGN TREASURER HANDBOOK 18 (2010).

⁴ FLA. STAT. §106.11(4) (2010).

⁵ *Id.*

⁶ See *Diaz de la Portilla v. Fla. Elections Comm'n*, 857 So. 2d 913 (2003).

⁷ FLA. STAT. §106.11(2)(a) (2010).

⁸ FLA. STAT. §106.08(1)(a) (2010).

⁹ FLA. STAT. §106.08(1)(c) (2010).

¹⁰ Op. Div. of Elecs. 90-15 (1990).

¹¹ FLA. STAT. §106.08(1)(c) (2010).

¹² *Id.*

¹³ Therefore, if there are two checks for \$500 each from the same joint account, it would not be considered an excessive contribution if each check is signed by a different individual.

¹⁴ FLA. STAT. §106.08(1)(b)2 (2010).

¹⁵ FLA. STAT. §106.09 (2010).

¹⁶ FLA. STAT. §106.08(1)(b)2 (2010).

¹⁷ FLA. STAT. §106.09 (2010). The Florida Legislature considered legislation during the 2011 session that would increase contribution limits.

¹⁸ FLA. STAT. §106.07(1) (2010).

¹⁹ See FLA. STAT. §106.07(2)(a)1 (2010). Candidates for statewide office, multi-county, and circuit court judge are required to file reports electronically with the Division of Elections. All district court of appeal judges and Supreme Court justices seeking retention are also required to file their reports with the Division of Elections. Candidates filing with the Division of Elections must file their reports before midnight of the due date. See also FLA. STAT. §99.061 (2010); FLA. STAT. §105.031 (2010).

²⁰ FLA. STAT. §106.0705(3) (2010).

²¹ FLA. STAT. §106.07(2)(a)1 (2010).

²² FLA. STAT. §106.07(5) (2010).

²³ FLA. STAT. §106.07(1) (2010).

²⁴ FLA. STAT. §106.07(8)(b) (2010).

²⁵ *Id.*

²⁶ FLA. STAT. §106.07(8) (2010).

²⁷ FLA. STAT. §106.011(5)(a) (2010).

²⁸ FLA. STAT. §106.011(5) (2010).

²⁹ FLA. STAT. §106.071(1) (2010).

³⁰ FLA. STAT. §106.011(3) (2010); Op. Div. of Elecs. 04-06 (2004).

³¹ See FLA. STAT. §106.08 (2010).

³² The limit is \$100 for an unemancipated child under 18 years of age.

³³ FLA. STAT. §106.011(3)(d) (2010).

³⁴ Between January 2010 and December 2010, probable cause was found in 62 cases for violations of political advertising provisions, including FLA. STAT. §§106.143, 106.071(2), 106.1435, 106.1437, and 106.147.

³⁵ FLA. STAT. §§106.143, 106.071, and 106.147 (2010).

³⁶ FLA. STAT. §106.143 (2010).

³⁷ See *Buckley v. Valeo*, 421 U.S. 1 (1976).

³⁸ FLA. STAT. §106.143(8)(e) (2010) (stating that the provisions regarding political disclaimers do not apply if political message or advertisement is "[p]laced or distributed on an unpaid profile or account which is available to the public without charge or on a social networking Internet website").

³⁹ See Op. Div. of Elecs. 06-12 (2004).

⁴⁰ FLA. DIV. OF ELECS., CANDIDATE AND CAMPAIGN TREASURER HANDBOOK at 35 (2010).

⁴¹ See FLA. STAT. §106.143(5) (2010).

⁴² FLA. STAT. §106.143(3) (2010).

⁴³ See FLA. STAT. §106.143(3) (2010).

⁴⁴ Outside parties tend to confuse the agencies, as evidenced by the amount of phone calls and mail received by the FEC for the DOE and vice versa.

⁴⁵ FLA. STAT. §106.25(2) (2010).

⁴⁶ FLA. STAT. §106.24(1)(a) (2010).

⁴⁷ See FLA. STAT. §106.24(1)(a) (2010).

⁴⁸ FLA. STAT. §106.24(1)(b) (2010).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² FLA. STAT. §106.24(4) (2010).

⁵³ See FLA. STAT. §106.26(13) (2010).

⁵⁴ See FLA. STAT. §106.22(2010).

⁵⁵ *Id.*

⁵⁶ FLA. STAT. §106.22(1) (2010).

⁵⁷ See FLA. STAT. §106.22 (2010).

⁵⁸ See FLA. STAT. §99.061 (2010); FLA. STAT. §105.031 (2010).

⁵⁹ FLA. STAT. §106.22(7) (2010).

⁶⁰ *Id.*

⁶¹ The phone number for DOE is (850) 245-6240.

⁶² FLA. STAT. §106.23(2) (2010); FLA. ADMIN. CODE R. 1S-2.010 (2003).

⁶³ FLA. STAT. §106.25(2) (2010).

⁶⁴ *Id.* See also *Valliere v. Fla. Elecs. Comm'n*, 989 So. 2d 1242 (Fla. 4th D.C.A. 2008).

⁶⁵ See FLA. STAT. §106.25(4) (2010); FLA. ADMIN. CODE R. 2B-1.0025(2005). See also FLA. STAT. Ch. 120 with regards to determination of probable cause.

⁶⁶ FLA. STAT. §106.25(4)(e) (2010).

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