

Electioneering Communications Organization Handbook

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Florida Department of State
Division of Elections
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Chapter 1: Background

The information contained in this publication is intended as a quick reference guide only and is current upon publication. To the extent that this handbook covers material beyond that contained in law or rule, the Division of Elections offers such material to candidates as guidelines. Chapters 97-106, Florida Statutes, the Constitution of the State of Florida, Division of Elections' opinions and rules, Attorney General Opinions, county charters, city charters and ordinances, and other sources should be reviewed in their entirety for complete information regarding campaign financing and qualifying.

All forms and publications mentioned in this handbook are available on the Division's website at:

<http://election.myflorida.com/>

Please direct any questions to either your county supervisor of elections or the Division at 850.245.6280. (See also Appendix A – Frequently Asked Questions.) Below you will find some other useful websites:

Florida Elections Commission:

www.fec.state.fl.us

Florida Elected Officials:

<http://election.dos.state.fl.us/electedindex.shtml>

Florida Supervisors of Elections:

<http://election.dos.state.fl.us/county/index.shtml>

Florida Association of City Clerks:

www.floridaclerks.org

Florida Attorney General:

<http://myfloridalegal.com>

Federal Election Commission:

www.fec.gov

Chapter 2: The Campaign Financing Act

The Florida Election Code comprises Chapters 97-106, Florida Statutes. Chapter 106, Florida Statutes, regulates campaign financing for all candidates, including judicial candidates, political committees, electioneering communications organizations, and political parties. It does not regulate campaign financing for candidates for federal office.

The Division of Elections:

- Oversees the interpretation of and provides guidance on the election laws.
- Provides advisory opinions to supervisors of elections, candidates, local officers having election related duties, political parties, political committees, or other persons or organizations engaged in political activity, relating to any provisions or possible violations of Florida election laws with respect to actions such person or entity has taken or proposes to take. (Section 106.23(2), F.S.)
- Prescribes rules and regulations to carry out the provisions of Chapter 106, Florida Statutes. (Section 106.22(9), F.S.)
- Conducts audits with respect to reports and statements filed under chapter 106. (Section 106.22(6), F.S.)
- Reports to the Florida Elections commission any apparent violations of Chapter 106. (Section 106.22(7), F. S.)

Chapter 3: Glossary of Terms

Campaign Fund Raiser: Any affair held to raise funds to be used in a campaign for public office. (Section 106.011(1), F.S.)

Campaign Treasurer: An individual appointed by a candidate or political committee as provided for in Chapter 106, F.S. (Section 106.011(2), F.S.) For an electioneering communication organization, this person is officially called only “treasurer.” (Sections 106.03 and 106.0703, F.S.)

Candidate: Any person to whom any one or more of the following applies:

- Any person who seeks to qualify for nomination or election by means of the petitioning process;
- Any person who seeks to qualify for election as a write-in candidate;
- Any person who receives contributions or makes expenditures, or gives his or her consent for any other person to receive contributions or make expenditures, with a view to bringing about his or her nomination or election to, or retention in, public office;
- Any person who appoints a treasurer and designates a primary depository; or
- Any person who files qualification papers and subscribes to a candidate’s oath as required by law.

This definition does not include any candidate for a political party executive committee. (Sections 97.021(5) and 106.011(3), F.S.)

Contribution: (See Section 106.011(5), F.S. and Chapter 6, Contributions.)

Election: Any primary election, special primary election, general election, special election, or municipal election held in this state for the purpose

of nominating or electing candidates to public office, choosing delegates to the national nominating conventions of political parties, or submitting an issue to the electors for their approval or rejection. (Section 106.011(7), F.S.)

Electioneering Communication: (See Section 106.011(8), F.S. and Chapter 11: Electioneering Communications.)

Expenditure: (See Section 106.011(10), F.S. and Chapter 7, Expenditures.)

Filing Officer: The person before whom a candidate qualifies or the agency or officer with whom a political committee or an electioneering communications organization registers. (Section 106.011(11), F.S.)

General Election: An election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law. (Section 97.021(15), F.S.)

In-Kind Contribution: In-kind contributions are anything of value made for the purpose of influencing the results of an election except money, personal services provided without compensation by individual volunteers, independent expenditures, as defined in Section 106.011(5), F.S., or endorsements of three or more candidates by an affiliated party committee or a political party.

Judicial Office: Includes the office of Justice of the Supreme Court, judge of a district court of appeal, judge of a circuit court, and county court judge. A judicial office is a nonpartisan office and a candidate for election or retention thereto is prohibited from campaigning or qualifying for such an office based on party affiliation. (Section 105.011, F.S.)

Nominal Value: Having a retail value of \$10 or less. (Section 97.021(20), F.S.)

Nonpartisan Office: An office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party affiliation. (Sections 97.021(21), and 106.143(3) F.S.)

Person: An individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. The term includes a political party, affiliated party committee, or political committee. (Section 106.011(14), F.S.)

Primary Election: An election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, county, or district office. (Section 97.021(28), F.S.)

Public Office: Any state, county, municipal, or school or other district office or position which is filled by vote of the electors. (Section 106.011(17), F.S.)

Special Election: Called for the purpose of voting on a party nominee to fill a vacancy in the national, state, county, or district office. (Section 97.021(33), F.S.)

Special Primary Election: A special nomination election designated by the Governor, called for the purpose of nominating a party nominee to be voted on in a general or special election. (Section 97.021(34), F.S.)

Statewide Office: Governor, Cabinet, and Supreme Court Justice.

Unopposed Candidate: A candidate for nomination or election to an office, who, after the last day on which any person, including a write-in candidate,

may qualify, is without opposition in the election at which the office is to be filled or who is without such opposition after such date as a result of any primary election or of withdrawal by other candidates seeking the same office. A candidate is not an unopposed candidate if there is a vacancy to be filled under Section 100.111(4), F.S., if there is a legal proceeding pending regarding the right to a ballot position for the office sought by the candidate, or if the candidate is seeking retention as a justice or judge. (Section 106.011(18), F.S.)

Chapter 4: Electioneering Communications Organization

An ***electioneering communications organization*** is any group, other than a political party or political committee whose election-related activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications and whose activities would not otherwise require the group to register as a political party or political committee under chapter 106, Florida Statutes. (See Appendix B for a comparison chart between an Electioneering Communications Organization and a Political Committee.)

(Section 106.011(9), F.S.)

Electioneering communication means any communication publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone that:

1. Refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an

appeal to vote for or against a specific candidate;

2. Is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and
3. Is targeted to the relevant electorate in the geographical area the candidate would represent if elected.

The exceptions are:

1. A communication disseminated through a means of communication other than a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, telephone, or statement or depiction by an organization, in existence prior to the time during which a candidate named or depicted qualifies for that election, made in that organization's newsletter distributed only to members of that organization;
2. A communication in a news story, commentary or editorial distributed through the facilities of any radio station, television station, cable television system, or satellite system unless the facilities are owned or controlled by any political party, political committee, or candidate. A news story distributed through the facilities owned or controlled by any political party, political committee, or candidate may nevertheless be exempt if it represents a bona fide news account communicated through a licensed broadcasting facility and the communication is part of a general pattern of campaign-related news accounts

that give reasonably equal coverage to all opposing candidates in the area;

3. A communication that constitutes a public debate or forum that includes at least two opposing candidates for an office or one advocate and one opponent of an issue, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum, provided that the staging organization:

- a. Is either a charitable organization that does not make other electioneering communications and does not otherwise support or oppose any political candidate or political party; or a newspaper, radio station, television station, or other recognized news medium; and
- b. Does not structure the debate to promote or advance one candidate or issue position over another.

An expenditure made for, or in furtherance of, an electioneering communication shall not be considered a contribution to or on behalf of any candidate and shall not constitute an independent expenditure, nor be subject to the limitations applicable to independent expenditures.

(Section 106.011(8), F.S.)

What to File

Form DS-DE 103, Electioneering Communications Statement of Organization – Each group shall file a statement of organization as an electioneering communications organization within 24 hours after that date on which it makes expenditures for an electioneering communication in excess of \$5,000,

if such expenditures are made within the timeframes specified in s. 106.011(18)(a)2. If the group makes expenditures for an electioneering communication in excess of \$5,000 before the timeframes specified in s. 106.011(18)(a)2., it shall file the statement of organization with 24 hours after the 30th day before a primary or special primary election, or within 24 hours after the 60th day before any other election, whichever is applicable.

Form DS-DE 103 shall include:

1. The name, mailing address, and street address of the organization.
2. The names, addresses, and relationships of affiliated or connected organizations.
3. The area, scope or jurisdiction of the organization.
4. The name, mailing address, street address, and position of the custodian of books and accounts.
5. The name, mailing address, street address, and position of other principal officers, including the treasurer and deputy treasurer, if any.
6. Plans for the disposition of residual funds which will be made in the event of dissolution.
7. A listing of all banks, safe-deposit boxes, or other depositories used for organization funds.
8. A statement of the reports required to be filed with federal officials, if any, and names, addresses, and positions of such officials.
9. A statement of whether the organization was formed as a newly created organization during the current calendar quarter or was

formed from an organization existing prior to the current calendar quarter. (Calendar quarters end the last day of March, June, September, and December.)

Any change in information previously submitted in a statement of organization shall be reported to the agency or officer with whom such organization is required to register within ten days following the change.

(Section 106.03(1),(2),(4),F.S.)

Form DS-DE 41, Registered Agent Statement of Appointment - Each electioneering communications organization shall have and continuously maintain in this state a registered office and a registered agent. The electioneering communications organization must file Form DS-DE 41 at the same time the organization files the Electioneering Communications Statement of Organization. An electioneering communications organization may change the registered agent appointment by filing Form DS-DE 41 indicating it is a "change of appointment." A registered agent may also resign his or her appointment by filing a written statement of resignation with the filing officer. An electioneering communications organization without a registered agent may not make expenditures or accept contributions until Form DS-DE 41 has been filed with the filing officer.

(Section 106.022, F.S.)

Where to File

- Division of Elections: Organizations supporting or opposing statewide, legislative, multicounty candidates.
- Supervisor of Elections: Organizations supporting or opposing countywide or less than county candidates (except municipal).
- Municipal Clerk: Organizations supporting or opposing only municipal candidates.
- Any electioneering communications organization that would be required to file in two or more locations need only file with the Division.

(Section 106.03(1)(b)2., F.S.)

Chapter 5: Depository

The bank account for an electioneering communications organization does not have to be separate from other accounts of the electioneering communications organization.

Chapter 6: Contributions

A contribution is:

1. A gift, subscription, conveyance, deposit, loan, payment or distribution of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. These include contributions in-kind, having an attributable monetary value in any form;
2. A transfer of funds between political committees, between electioneering communication organizations;
3. The payment, by any person other than a candidate or political committee of compensation for the personal services of another person which are rendered to a candidate without charge to the candidate or political committee for such services; or
4. The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit. The term includes any interest earned on such account or certificate.

The exceptions are:

1. Services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political committee including, but not limited to, legal and accounting services.
2. Editorial endorsements.

IMPORTANT: The law provides no exceptions for reporting contribution information, regardless of the size of the contribution.

(Sections 106.011(3) and 106.0703(3)(a), F.S.)

In-Kind Contributions

In-kind contributions are anything of value made for the purpose of influencing the results of an election.

The exceptions are:

1. Money;
2. Personal services provided without compensation by individual volunteers;
3. Independent expenditures, as defined in Section 106.011(5), F.S.; or
4. Endorsements of three or more candidates by political parties.

IMPORTANT: Any person who makes an in-kind contribution shall, at the time of making the contribution, place a fair market value on the contribution. In-kind contributions are subject to contribution limitations.

(Sections 106.011(5), 106.021, and 106.055, F.S.)

Loans

Loans are considered contributions and are subject to contribution limitations. Loans to or from each person or political committee must be reported together with names, addresses, occupations and principal places of business, if any, of the lenders and endorsers, including the date and amount of each loan on the treasurer's report.

(Sections 106.011(5), 106.0703, and 106.075, F.S.)

Debit and Credit Card Contributions

An electioneering communications organization may accept contributions via a credit card, debit card, or money order. These contributions are categorized as a "check" for reporting purposes.

*(Section 106.11(2), F.S., and
Division of Elections Opinion 00-03)*

Chapter 7: Expenditures

An expenditure is a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication.

An expenditure for an electioneering communication is made when the earliest of the following occurs:

1. A person executes a contract for applicable goods or services;
2. A person makes payment, in whole or in part, for the production or public

dissemination of applicable goods or services; or

3. The electioneering communication is publicly disseminated.

(Sections 106.011(10), F.S.)

IMPORTANT: An electioneering communications organization shall not use a credit card.

(Section 106.0703(8), F. S.)

Chapter 8: Recordkeeping

The Division has a few suggestions which may be helpful to treasurers in setting up a system to record and maintain campaign information.

1. Keep a schedule of due dates for treasurer's reports. The Division will post on its website a calendar of election and reporting dates.
2. Know what period of time each report covers and only report activity occurring during that reporting period. (See 2013 and 2014 Reporting Dates)
3. Keep a copy of the electronic receipt for each report filed for your own records if filing with the Division. Keep a certificate of mailing for each report filed if filing with other filing officers.
4. Record all contributions when received. Make sure to include the name, address, specific occupation, or principal type of business if over \$100, of the contributor, and the amount and date of each contribution. Keep contributions itemized by monetary, in-kind and loans.

5. Record all expenditures when they occur. List the name and address of each person to whom the expenditure was made along with the amount, date, and purpose.
6. Keep a petty cash ledger of all expenditures. The individual expenditures do not have to be listed on treasurer's reports. However, you must list the total amount of petty cash withdrawn and total amount spent during the reporting period.
7. Monitor the cash flow to know how much money is available at all times in the account to avoid any possibility of authorizing an expenditure when money is not available to pay for such expenditure.
8. Maintain a listing of all funds currently in the separate interest-bearing account, certificate of deposit, or money market account.

Chapter 9: Filing Campaign Reports

Each treasurer designated by an electioneering communications organization shall file regular reports of all contributions received and all expenditures made by or on behalf of such organization. The treasurer shall certify as to the correctness of each report. Each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any treasurer who willfully certifies the correctness of any report while knowing that such report is incorrect, false or incomplete commits a misdemeanor of the first degree.

(Section 106.0703, F.S.)

Where to File

A treasurer of an electioneering communications organization is required to file treasurer's reports with the officer with whom the organization registers. However, an electioneering communications organization that is registered with the Department of State (Division) and that makes a contribution or expenditure to influence the results of a county or municipal election that is not being held at the same time as a state or federal election must file reports with the county or municipal filing officer on the same dates as county or municipal candidates or committees for that election. The electioneering communications organization must also include the expenditure in the next report filed with the Division following the county or municipal election.

Organizations filing reports with the Division are required to file by means of the Electronic Filing System (see Chapter 10, Electronic Filing of Campaign Reports). If the organization's filing officer is other than the Division, contact the appropriate filing officer to find out their requirements.

(Sections 106.0703 and 106.0705, F.S.)

When to File

Reports must be filed on the 10th day following the end of each calendar month from the time the committee or organization registers, except that if the 10th day occurs on a Saturday, Sunday or legal holiday, the report shall be filed on the next business day that is not a Saturday, Sunday or legal holiday.

Electioneering Communications Organizations required to file reports with the Division must file reports:

1. On the 60th day immediately preceding the primary election, and each week thereafter, with the last weekly report being filed on the 4th day immediately preceding the general election.
2. On the 10th day immediately preceding the general election, and every day thereafter excluding the 4th day immediately preceding the general election, with the last daily report being filed the day before the general election.

Any electioneering communications organizations required to file reports with a filing officer other than the division must file reports on the 60th day immediately preceding the primary election and bi-weekly on each Friday thereafter through and including the 4th day immediately preceding the general election, with additional reports due on the 25th and 11th days before the primary election and the general election.

In addition to the reports required by paragraph (a), an electioneering communications organization that is registered with the Department of State and that makes a contribution or expenditure to influence the results of a county or municipal election that is not being held at the same time as a state or federal election must file reports with the county or municipal filing officer on the same dates as county or municipal candidates or committees for that election. The electioneering communications organization must also include the expenditure in the next report filed with the Division of Elections pursuant to this section following the county or municipal election.

(Section 106.0703(1)(e), F.S.)

Organizations that file with the Division should refer to the 2013 and 2014 Calendar of Reporting Dates

for specific dates. Organizations registered with a county or city should contact the appropriate filing officer for reporting schedules.

Unless the electronic filing requirements of Section 106.0705, Florida Statutes, apply, reports shall be filed no later than 5 p.m. of the day designated. A report postmarked by the U.S. Postal Service no later than midnight of the day designated is deemed timely filed. A report received by the filing officer within 5 days after the designated due date that was delivered by the U.S. Postal Service is deemed timely filed unless it has a postmark indicating the report was mailed after the designated due date. A certificate of mailing obtained from and dated by the U.S. Postal Service at the time of mailing or a receipt from an established courier company, which bears a date on or before the date on which the report is due, is proof of mailing in a timely manner. Reports filed with the Division through the Electronic Filing System (EFS) are due no later than midnight, Eastern Time, of the due date.

(Sections 106.07, 106.0703, 106.0705 and 106.141, F.S.)

Penalty for Late Filing

Any electioneering communications organization failing to file a report on the designated due date shall be subject to a fine of \$50 per day for the first three days late and, thereafter, \$500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, for the reports immediately preceding the primary and general election, the fine shall be \$500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report.

(Section 106.0703(7), F.S.)

Negative Report Required

When there has been no reportable activity in the account during a reporting period (no funds expended or received), the treasurer shall file a written report with the filing officer that no activity occurred. This filing must be made by the prescribed reporting date.

(Section 106.0703(6), F.S.)

All reports filed with the Division must be filed electronically using the Division's electronic filing system.

(Sections 106.0703 and 106.0705, F.S.)

Special Election Reports

When a special election is called to fill a vacancy in office, all electioneering communications organizations making contributions or expenditures to influence the results of the special election shall file treasurers' reports with the filing officer on the dates set by the Department of State pursuant to Section 100.111, F.S.

(Section 106.0703, F.S.)

Organizations are to include on the special election campaign treasurer's reports only expenditures related to the special election made by the organization during the special election reporting periods. All contributions received and all expenditures made not related to the special election during the current quarter should be filed on the next monthly report. Once an organization has participated in the special election and has filed a special election campaign report, all other special election reports remaining must also be filed by the organization, even if there is no further special election activity.

Incomplete Reports

If a campaign treasurer files a report that is deemed incomplete, the treasurer will be notified by the filing officer as to why the report is incomplete by certified mail or by another method using a common carrier that provides a proof of delivery as to why the report is incomplete. The campaign treasurer must file an addendum to the incomplete report within seven days of notification. The addendum must include all necessary information to complete the report. The failure to file a complete report after notice constitute a violation of Chapter 106, F.S.

(Section 106.0703(2)(b)1., F.S.)

Reporting Total Sums

Each treasurer's report required by Chapter 106, F.S., shall contain the total sums of all loans, in-kind contributions, and other receipts, and total sums of all expenditures made during the reporting period. The reporting forms shall be designed to elicit separate totals for in-kind contributions, loans, and other receipts.

Form DS-DE 12, Campaign Treasurer's Report Summary is used to report totals for all contributions, in-kind contributions, loans, and other receipts.

(Section 106.0703(3), F.S.)

Reporting Contributions

Each report must contain:

1. Full name, address, specific occupation, amount, and date of each person making a contribution. Reports must provide as clear a description as practicable of the principal type of business conducted for corporations contributing. Occupations or principal type

of business are not required if the contribution is \$100 or less.

2. Name, address, amount, and date of each political committee or organization making any transfer of funds.
3. Full name, address, specific occupation, principal place of business of the lender and endorser, date and amount of each loan.
4. Statement of each contribution, rebate, refund or other receipts not listed in 1. through 3. above.

(Section 106.0703(3), F.S.)

Reporting Expenditures

Each report must contain:

1. Full name and address of each person to whom expenditures have been made, along with the amount, date, and clear purpose of the expenditure.
2. Full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for expenses was made, along with the amount, date and clear purpose of the expenditure. (See also Reporting Other Distributions)
3. Amount and nature of debts and obligations owed by or to the organization, which relate to the conduct of any electioneering communication.
4. The amount and nature of any separate interest-bearing accounts or certificates of deposit. Identification of the financial institution in which such accounts or

certificates of deposit are located must be identified.

5. The primary purposes of an expenditure made indirectly through an electioneering communications organization for goods and services such as communications media placement or procurement services and other expenditures that include multiple components as part of the expenditure. The primary purpose of an expenditure shall be that purpose, including integral and directly related components, that comprises 80 percent of such expenditure. (See also Reporting Other Distributions)

(Section 106.0703(3), F.S.)

Reporting Other Distributions

Each report must contain:

1. Full name and address of each person to whom payment was made for which reimbursement was made by check together with the purpose of such payment.
2. Expenditures made indirectly through a treasurer for goods or services, such as communications media placement or procurement services and other expenditures that include multiple integral components as part of the expenditure.

(Section 106.0703(3), F.S.)

Chapter 10: Electronic Filing of Campaign Reports

The Electronic Filing System (EFS) is an Internet system for recording and reporting campaign finance activity by reporting period. Each

electioneering communications organization required to file reports with the Division pursuant to Section 106.0703, F.S., must file such reports with the Division by means of the EFS.

Reports filed:

1. Shall be completed and filed through the EFS not later than midnight, Eastern Time of the day designated. Reports not filed by midnight of the day designated are late filed and are subject to the penalties under Section 106.0703(8), F.S., as applicable.
2. Are considered to be under oath by the treasurer, and such person is subject to provisions of Section 106.0703(4), F.S. Persons given a secure sign-on to the EFS are responsible for protecting such from disclosure and are responsible for all filings using such credentials, unless they have notified the division that their credentials have been compromised.

*(Sections 106.0703, 106.0705
and 106.0706, F.S.)*

Accessing the EFS

From Internet Explorer you can access the EFS at <https://efs.dos.state.fl.us>. Each person filing a report is provided an identification number and initial password to gain entry. Once you log in using the initial password, you will be prompted to change it to a confidential one.

Creating Reports

Campaign reports must be entered, saved, reviewed, and filed via the EFS either by directly entering data into the web application or by uploading data using an approved vendor's software. The division maintains a list of approved software vendors whose programs meet the file

specifications for filing campaign reports. Instructions for uploading reports are provided in the EFS Help Guide.

Submitting Reports

Reports will be held in pending status until the report is ready to be filed. Each person eligible to file a report will receive a PIN (personal identification number) that allows the person to file reports via the EFS. A person's PIN is considered the same as that person's signature on a filed report.

Electronic Receipts

The person filing a report on the EFS may print an electronic receipt verifying the report was filed with the division. Each report filed by means of the EFS is considered to be under oath and such persons filing the report are subject to the provisions of Chapter 106, F.S.

EFS HELP LINE

(850) 245-6280

EFS HELP GUIDE

<http://election.dos.state.fl.us/publications/publications.shtml>

NOTE: For further information on the EFS, see Rule 1S-2.017, Florida Administrative Code, Reporting Requirements for Campaign Treasurer's Reports.

Chapter 11: Electioneering Communications

Electioneering communication means any communication publicly distributed by a television station, radio station, cable television system,

satellite system, newspaper, magazine, direct mail, or telephone that:

1. Refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate;
2. Is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and
3. Is targeted to the relevant electorate in the geographical area the candidate would represent if elected.

The exceptions are:

1. A communication disseminated through a means of communication other than a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, telephone, or statement or depiction by an organization, in existence prior to the time during which a candidate named or depicted qualifies for that election, made in that organization's newsletter distributed only to members of that organization;
2. A communication in a news story, commentary or editorial distributed through the facilities of any radio station, television station, cable television system, or satellite system unless the facilities are owned or controlled by any political party, political committee, or candidate. A news story distributed through the facilities owned or controlled by any political party,

political committee, or candidate may nevertheless be exempt if it represents a bona fide news account communicated through a licensed broadcasting facility and the communication is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the area;

3. A communication that constitutes a public debate or forum that includes at least two opposing candidates for an office or one advocate and one opponent of an issue, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum, provided that the staging organization:
 - a. Is either a charitable organization that does not make other electioneering communications and does not otherwise support or oppose any political candidate or political party; or a newspaper, radio station, television station, or other recognized news medium; and
 - b. Does not structure the debate to promote or advance one candidate or issue position over another.

An expenditure made for, or in furtherance of, an electioneering communication shall not be considered a contribution to or on behalf of any candidate and shall not constitute an independent expenditure, nor be subject to the limitations applicable to independent expenditures.

(Section 106.011(8), F.S.)

Electioneering Communication Disclaimers

Any electioneering communication, other than a telephone call, shall prominently state “Paid electioneering communication paid for by (Name and address of person paying for the communication).”

(Section 106.1439, F.S.)

Electioneering Communication Telephone Call Disclaimer

Any electioneering communication telephone call shall identify the persons or organizations sponsoring the call by stating either: “Paid for by ... (name or persons or organizations sponsoring the call) ... or “Paid for on behalf of ... (name of persons or organizations authorizing call)...” This telephone disclaimer does not apply to any telephone call in which the individual making the call is not being paid and the individuals participating in the call know each other prior to the call.

(Section 106.1439, F.S.)

Penalty for Electioneering Communication Disclaimer Violation

Any person who fails to include the disclaimer in any electioneering communication that is required to contain such disclaimer commits a misdemeanor of the first degree, punishable as provided in Sections 775.082 or 775.083, F.S.

(Section 106.1439, F.S.)

Chapter 12: Florida Elections

Commission

The Florida Elections Commission is a separate and independent entity from the Division of Elections. Commissioners are appointed by the Governor from lists of names submitted by legislative leaders.

Automatic Fine Appeal Process

The treasurer of an electioneering communications organization may appeal or dispute a fine for a late filed campaign treasurer’s report. The appeal must be based upon, but not limited to, unusual circumstances surrounding the failure to file on the designated due date. The treasurer may request and is entitled to a hearing before the Florida Elections Commission, which has the authority to waive the fine in whole or in part. The Florida Elections Commission must consider the mitigating and aggravating circumstances contained in Section 106.265(1), F.S., when determining the amount of a fine, if any, to be waived. The appeal must be made within 20 days of the receipt of the notice of payment due. The treasurer must, within the 20 day period, notify the filing officer in writing of his or her intention to bring the matter before the Commission.

(Section 106.0703(7)(c), F.S.)

Complaint Process

Any person who has information of a violation of Chapters 104 or 106, F.S., shall file a sworn complaint with the Florida Elections Commission, 107 West Gaines Street, Suite 224, Tallahassee, Florida 32399-1050 or call 850-922-4539. A complaint form may be obtained from the Florida Elections Commission or downloaded from the Commission’s website at www.fec.state.fl.us.

(Sections 106.25 and 106.28, F.S.)

Appendices

Appendix A

Frequently Asked Questions

1. What is an electioneering communication?

Any communication publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone that (1) refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate; (2) is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and (3) is targeted to the relevant electorate in the geographical area the candidate would represent if elected.

Expressly advocate means the communication has words such as "vote for," "vote against" "elect," "support," "cast your ballot for," "(Name) for Mayor," "defeat," or "reject."

(Section 106.011(8), F.S.)

2. Do electioneering communications need disclaimers?

Yes. The disclaimer, except for telephone calls, must read:

"Paid electioneering communication paid for by
(name and address of person paying for the communication)"

The disclaimer for an electioneering communication telephone call must read:

"Paid for by ... (name or persons or organizations sponsoring the call) ... " or
"Paid for on behalf of ... (name of persons or organizations authorizing call)..."

(Section 106.1439, F.S.)

3. Who is responsible for keeping tabs on aggregate totals of campaign contributions?

The treasurer is responsible for receiving and reporting all contributions. *(Section 106.0703, F.S.)*

4. May an electioneering communications organization accept a contribution from a trust fund?

Yes. Chapter 106, F.S., defines a "person" as an individual, corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. The term also includes a political party, or political committee. *(Section 106.011(8), F.S.)*

5. Do I have to itemize small contributions of \$5, \$10, \$50, etc.?

Yes. The law provides no exceptions for the reporting of contribution information, regardless of the size of the contribution. The full name and address of the contributor are also required. *(Section 106.0703(3)(a), F.S.)*

6. How is the value of an in-kind contribution determined?

The contributor must inform the person receiving the contribution of the fair market value at the time it is given. *(Section 106.055, F.S.)*

7. Can a corporation give to an electioneering communications organization?

Yes. A corporation is under the definition of a "person" in Chapter 106, F.S. *(Section 106.011(8), F.S.)*

8. Can I conduct a raffle to raise money for my campaign?

No. Pursuant to Section 849.09, Florida Statutes, it is unlawful for any person in this state to set up, promote, or conduct any lottery for money or anything of value.

9. Do I have to file campaign reports on the Electronic Filing System (EFS)?

If the Division of Elections is your filing officer, you are required to file all campaign reports via the EFS. If your filing officer is other than the Division of Elections, you must contact that office to find out their requirements. *(Section 106.0705, F.S.)*

10. If my treasurer is out of town, can I have an extension to file my report?

No. The election laws do not provide for an extension under these circumstances. *(Section 106.0703(4), F.S.)*

11. If I make a mistake on my report can I go back in and correct it on the EFS?

Once the report is submitted to the Division of Elections, the EFS will not permit you to go back and make changes. In order to correct mistakes or add and delete information, you must submit an "amendment."

12. If I am late submitting my report, how is my fine calculated?

\$50 per day for the first 3 days late and, thereafter, \$500 per day for each late day, not to exceed 25% of the total receipts or expenditures, whichever is greater for the period covered by the late report. However, for reports immediately preceding the primary and general election, the fine shall be \$500 per day for each day, not to exceed 25% of the total receipts or expenditures, which is greater, for the period covered by the late report.

13. How long are campaign records kept at the Division of Elections or the supervisor of elections?

Ten years from the date of receipt.

(Sections 98.015(5) and 106.22(4), F.S.)

**Comparison –
Political Committee vs. Electioneering Communications Organization (eff. November 1, 2013)**

	Political Committee (PC)	Electioneering Communication Organization (ECO)
Purpose	<p>To support or oppose any candidate, issue*, PC, ECO, or political party.</p> <p>May make independent expenditures**</p> <p>May make electioneering communications (if political committee supports candidates).</p> <p>*A sponsor of a constitutional initiative petition must be a PC. (§ 100.371, F.S.)</p> <p>** Independent expenditure = an expenditure made for the purpose of expressly advocating the election/defeat of candidate/issue, which expenditure is not controlled by, coordinated with, or made upon consultation with any candidate, political committee, or agent of such. (§ 106.011(12), F.S.)</p> <p><u>Note about independent expenditures:</u></p> <p>If made by an individual: No limit on amount of independent expenditures exists, but if \$5000 or more, must file reports as if was a PC. (§ 106.071, F.S.)</p> <p>If made by a corporation or business entity: If independent expenditure is for/against an issue: No limit on the amount of independent expenditures exists, but if \$5000 or more, must file reports as if was a PC. (§ 106.071, F.S.) However, if independent expenditure is for/against a candidate > \$500: no limit, but must register as PC and file reports as PC. (§ 106.011(16)(b)2., F.S.) -- See DE 12-08.</p>	<p>Election-related activities are limited to making expenditures for electioneering communications* or accepting contributions for the purpose of making electioneering communications and such activities would not otherwise require the organization to register as a political party, or political committee. (§ 106.011(9), F.S.)</p> <p>May not “expressly advocate” the election or defeat of a candidate, but the communication must be susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate. (§ 106.011(8), F.S.)</p> <p>* Electioneering communication =</p> <ol style="list-style-type: none"> 1. Communication publicly distribute by TV station, radio station, cable TV system, satellite system, newspaper, magazine, direct mail, or telephone; 2. Refers to a clearly identified candidate without expressly advocating election or defeat, but is susceptible of no reasonable interpretation other than appeal to vote for or against a specific candidate; 3. Is made w/in 30 days before a primary or special primary or 60 days before any other election for the office sought by the candidate; and 4. Is targeted to the relevant electorate in the geographic area the candidate would represent if elected. (§ 106.011(8)(a), F.S.)

	Political Committee (PC)	Electioneering Communication Organization (ECO)
Initial Filings	<p>Statement of Organization must be filed within 10 days after its organization when PC receives contributions or makes expenditures in excess of \$500 in a calendar year <u>or</u> seeks signatures of voters in support of an initiative. Also, must file immediately when organized within 10 days of any election. (<i>§ 106.03, F.S.</i>)</p> <p>Appointment of Campaign Treasurer and Designation of Campaign Depository (<i>§ 106.021, F.S.</i>)</p> <p>Registered Agent Statement of Appointment (<i>§ 106.022, F.S.</i>)</p>	<p>Statement of Organization must be filed within 24 hours when ECO makes expenditures in excess of \$5,000 in a calendar year if made <u>within</u> 30 days before a primary or 60 days before any other election for the office sought by the candidate. If made <u>before</u> the 30/60 day timeframe, statement of organization must be filed within 24 hours after the 30th day before the primary or within 24 hours after the 60th day before any other election, whichever is applicable. (<i>§ 106.03(1)(b)1., F.S.</i>)</p> <p>Registered Agent Statement of Appointment (<i>§ 106.022, F.S.</i>)</p>
Campaign Accounts	Funds must be deposited in a campaign depository in an account that contains the name of the committee (<i>§ 106.05, F.S.</i>)	May use the organization's checking account
Limits on Contributions <u>To</u> the Entity	No monetary limit	No monetary limit
Limits on Contributions <u>By</u> the Entity	<p>PC to a candidate - \$1000 per election, except limit to candidates for statewide office or Supreme Court Justice = \$3000</p> <p>PC to a political party – no limit</p> <p>PC to ECO – no limit</p> <p>PC to PC – no limit</p>	<p>Limited to making electioneering communications (<i>§ 106.011(9), F.S.</i>)</p> <p>May not make contributions to candidates (<i>§ 106.011(9), F.S.</i>)</p> <p>May not make contributions to a political party or a political committee (<i>§ 106.011(9), F.S.</i>)</p> <p>May make contributions to another ECO</p>
Disposition of Residual Funds in the Event of Dissolution	In accordance with the plans stated in the PC's Statement of Organization (<i>§ 106.03(2)(j), F.S.</i>)	In accordance with the plans stated in the ECO's Statement of Organization (<i>§ 106.03(2)(j), F.S.</i>)

	Political Committee (PC)	Electioneering Communication Organization (ECO)
Restrictions	<p>Funds may be used only for PC activity and only for the purpose of influencing the results of an election.</p> <p>Credit cards: PC created to support/oppose a statewide candidate or to support/oppose any statewide issue, may use credit cards in making travel-related campaign expenditures subject to the conditions in § 106.125, F.S.</p>	<p>Funds for its election-related activities may only be used to make electioneering communications. (<i>§ 106.011(9), F.S.</i>) (Thus, ECO may not make expenditures for an ad which is distributed outside the 30/60-day timeframe since the ad would not be an electioneering communication)</p> <p>May not make independent expenditures</p> <p>May not expressly advocate</p> <p>May not use credit cards. (<i>§ 106.0703(8), F.S.</i>)</p>
Where to File	<p>Division of Elections – if supports or opposes statewide, legislative, or multicounty candidates or issues.</p> <p>Supervisor of Elections – if supports or opposes candidates or issues in a countywide or less than a countywide election, except if supports or opposes <i>only</i> municipal candidates or issues.</p> <p>Municipal Clerk – if supports or opposes <i>only</i> municipal candidates or issues.</p> <p>Any political committee which would be required under this subsection to file a statement of organization in two or more locations need file only with the Division of Elections. (<i>§ 106.03(3)(d), F.S.</i>)</p>	<p>Division of Elections – if relates to statewide, legislative, or multicounty candidates.</p> <p>Supervisor of Elections – if relates to candidates in a countywide or less than a countywide election, except if relates <i>only</i> to municipal candidates.</p> <p>Municipal Clerk – if relates to <i>only</i> municipal candidates.</p> <p>Any electioneering communications organization that would be required to file a statement of organization in two or more locations need only file a statement of organization with the Division of Elections. (<i>§ 106.03(1)(b)2.d., F.S.</i>)</p>

	Political Committee (PC)	Electioneering Communication Organization (ECO)
When to File Reports	<p>Monthly; except for additional reports due beginning 60 days before the primary election; thereafter, reports are due as follows for political committees who:</p> <p>1. File with Division of Elections —</p> <ul style="list-style-type: none"> • WEEKLY full reports of contributions and expenditures to the 4th day before the general election; and, • DAILY contribution-only reports beginning on the 10th day before the general election and ending on the 5th day before the general election. <p>2. File with a filing officer other than the Division of Elections—</p> <ul style="list-style-type: none"> • BI-WEEKLY full reports of contributions and expenditures to 4th day before the general election, with an additional report due on the 25th and 11th days before the primary and general election. <p>See <i>Calendar of Reporting Dates</i> on the Division’s web site. For filing date calendars for counties and municipalities, contact the applicable county supervisor of elections and municipal clerk, respectively.</p> <p style="text-align: right;">(<i>§ 106.07(1), F.S.</i>)</p>	<p>Monthly; except for additional reports due beginning 60 days before the primary election; thereafter, reports are due as follows for ECOs who:</p> <p>1. File with Division of Elections —</p> <ul style="list-style-type: none"> • WEEKLY full reports of contributions and expenditures to the 4th day before the general election; and, • DAILY contribution-only reports beginning on the 10th day before the general election and ending on the day before the general election (excluding the 4th day before the general election). <p>2. File with a filing officer other than the Division of Elections—</p> <ul style="list-style-type: none"> • BI-WEEKLY full reports of contributions and expenditures to 4th day before the general election, with an additional report due on the 25th and 11th days before the primary and general election. <p>See <i>Calendar of Reporting Dates</i> on the Division’s web site. For filing date calendars for counties and municipalities, contact the applicable county supervisor of elections and municipal clerk, respectively. (<i>§ 106.0703(1), F.S.</i>)</p>
Political Disclaimers on ads	<p>Political advertisements – <i>see § 106.143(1)(c) & (2), F.S.</i></p> <p>Independent expenditures – <i>see § 106.071(2), F.S.</i></p> <p>Electioneering communication – <i>see § 106.1439, F.S.</i></p> <p>Telephone solicitation – <i>see §§ 106.147(1) & 106.1439(2), F.S.</i></p> <p>Miscellaneous advertisement – <i>see § 106.1437, F.S.</i></p>	<p>Electioneering communication – <i>see § 106.1439, F.S.</i></p> <p>Electioneering communication telephone solicitation – <i>see § 106.1439(2), F.S.</i></p>

	Political Committee (PC)	Electioneering Communication Organization (ECO)
Pros/Cons	<p>Pros:</p> <ul style="list-style-type: none"> May accept unlimited contributions May communicate with public May expressly advocate May contribute to candidate, political party, or any other political organization May make electioneering communications, which are not considered contributions to the candidate <p>Cons:</p> <ul style="list-style-type: none"> Cannot coordinate with the candidate on political advertisements without the political advertisement becoming a contribution to the candidate 	<p>Pros:</p> <ul style="list-style-type: none"> May accept unlimited contributions May communicate with public May coordinate with candidates on electioneering communications (not subject to the limitations applicable to independent expenditures) (§ 106.011(8)(d), F.S.) Expenditures made for, or in furtherance of, an electioneering communication are not considered a contribution to the candidate (§ 106.011(8)(c), F.S.) <p>Cons:</p> <ul style="list-style-type: none"> May not expressly advocate May not contribute to candidates, political parties, affiliated party committees, or political committees Cannot use credit card