



THE COMMONWEALTH OF MASSACHUSETTS
 OFFICE OF CAMPAIGN & POLITICAL FINANCE

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M-10-02
 Issued: December 7, 2010
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MEMORANDUM

TO: Candidates, Political Committees and Local Election Officials
 FROM: Michael J. Sullivan, Director *MJS 5/20/19*
 SUBJECT: Legal defense, recount and inaugural funds

This memorandum is issued to provide guidance regarding the changes made to the campaign finance law by Chapter 28 of the Acts of 2009 ("the Act") relating to the creation of legal defense, recount and inaugural funds, and the disclosure required of donations received by such funds. These provisions became effective as of January 1, 2010. OCPF has issued regulations relating to such funds. See 970 CMR 1.20. A candidate or candidate's committee may establish a separate legal defense fund, inauguration fund, or recount fund. A state party committee may establish a separate legal defense fund.

1. Basic Rules

If a candidate or committee wishes to raise money, or in-kind donations, or incur liabilities to pay costs associated with a legal defense, recount, or an inauguration event, and the candidate or committee files with OCPF, the candidate or committee may set up a separate fund to raise and spend money for that purpose. The fund is separate from the candidate's committee or party committee and any donations received by the fund shall not be deposited into the candidate's campaign account or a committee account. Also, donations to such fund shall not be used to benefit a political committee. See M.G.L. c. 55, § 18E(a). A candidate or committee that files locally must file with the local election official.

A candidate who has a separate legal defense, recount or inauguration fund can also use the candidate's committee to raise funds and make expenditures for legal defense, recount or inauguration purposes if the expenditures for such purposes comply with M.G.L. c. 55, § 6. Where a legal defense fund has been created by a state party committee, the state party committee may use the legal defense fund or the state party committee's account to make legal expenditures consistent with the statute. If funds are raised by a political committee for such purposes, and if deposited into the committee's campaign account, the funds are also considered "contributions" subject to the limits of the campaign finance law.



Legal defense, recount, and inauguration funds may receive donations from business corporations or other entities that would be prohibited from contributing to political committees, and may also receive donations from individuals in excess of \$1,000.¹ It is important to keep in mind, however, that fundraising for legal defense, recount, and inauguration funds is subject to M.G.L. c. 55, §§ 13-17. Persons employed for compensation by the Commonwealth or any of its subdivisions should not directly or indirectly solicit or receive donations for such funds, and donations should not be solicited or received in any building occupied for state, county or local governmental purposes. In addition, legal defense, recount, and inaugural funds may not reimburse a candidate's committee or party committee for expenses made relating to a legal matter, recount or inauguration.

Legal defense funds may be created to pay costs associated with a criminal, civil, or administrative matter that is not primarily personal in nature. *See* 970 CMR 1.20(7). A legal defense fund may therefore be created to raise money to pay litigation expenses incurred in connection with alleged actions of a candidate while the candidate was acting as a public official, or while the candidate was undertaking political campaign activities. The statute does not, however, generally contemplate the use of a legal defense fund to initiate litigation, or for the creation of an ongoing legal defense fund for a speculative matter that may or may not arise in the future.²

Inaugural funds may be used only for expenses related to holding an inauguration event. Such funds may not be used for other expenses related to the transition of office, e.g., renting a transition office or salaries.

2. Creation of account

The candidate or committee on whose behalf the fund is established must notify OCPF in writing of the creation of the fund. *See* 970 CMR 1.20(1). The notification should be filed prior to the date the first report disclosing donations is due, and must indicate the name, address, email address, and phone number of the person who will be filing the reports. The notification must also indicate the name of the fund, which needs to include the full name of the candidate on whose behalf the fund is created. The notification is done using a Form CPF 101 SFA. This form is available for download from OCPF's website³

If the candidate or committee does not file with OCPF, a Form M101 SFA is filed with the local election official.

Any funds received may be deposited into, and spent from, a bank account that is separate from the account of the candidate's political committee. It is our understanding that a Federal tax ID number (which would be different than the number used by the political committee) may be needed to open the bank account, and that the ID number may be obtained by visiting the Internal Revenue Service's website. *See* OCPF Memorandum M-89-02 for guidance on how to obtain the tax ID number.

¹ In addition, a legal defense fund created by a party committee may accept contributions from individuals in excess of \$5,000.

² Although there may be unusual instances where a legal defense fund may be used in connection with affirmative litigation, candidates or committees should contact OCPF for written guidance prior to creating a legal defense fund for such purposes.

³ Copies of forms are also attached to this Memorandum.

3. Filing of reports disclosing donations

Donations to a legal defense, recount, or inaugural fund must be disclosed on or before the fifth day of the month following the month in which the donations are received, complete as of the last day of the preceding month. The statute does not require the filing of year-end reports. A candidate or other person may loan the fund money, and ultimately be repaid from donations received. Loans to the fund are reported in donation reports. Expenditures do not have to be disclosed, but records must be kept of all financial activity, including expenditures.

For a candidate or committee that files with OCPF, the "donation report" must be filed electronically, and must disclose the name, address, and employer (not occupation) of all persons donating more than \$50 during a reporting period, listed alphabetically, the amount of each donation, and the total amount of donations received in the reporting period that are not itemized. The term "donation" includes donations in money, in-kind, and loans provided to such a fund.

If the donations are received on behalf of a candidate or committee that does not file with OCPF, a Form M 18E (listed in the municipal forms section of OCPF's website and attached to this Memorandum) is filed with the local election official.

Monthly reports of donations are not required if donations are not received by a legal defense, inauguration, or recount fund during the month that would be covered by a report.

4. Dissolution of fund

When all donations have been received and all payments made to accomplish the purposes of the fund, any money remaining in the fund's account must be disposed of in a manner consistent with the residual funds clause, and OCPF must be notified, by filing a Notice of Dissolution (Form CPF 18E), stating that the fund has been closed. Inaugural funds must dissolve after the costs of an inaugural event are paid, and dissolution is required no later than one year after the inaugural event. Remaining funds may not be deposited into a candidate's or political committee's account or used for any other purpose not consistent with the residual funds clause.

Please call OCPF at (617) 979-8300, if you have any questions.



Commonwealth of Massachusetts

Form CPF 101 SFA: STATEMENT OF ORGANIZATION SEGREGATED FUND ACCOUNT FOR CANDIDATE OR COMMITTEE

Office of Campaign and Political Finance

File with: Director
Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

(617) 979-8300
(800) 462-OCPF
www.ocpf.us
ocpf@mass.gov

NOTICE IS HEREBY GIVEN in accordance with the provisions of General Laws, Chapter 55, Section 18E and 970 CMR 1.20, as amended, of the organization of a segregated fund account as follows:

1. Type of Fund (check one): Inaugural Recount Legal Defense

**A State Party Committee may only establish a legal defense fund*

2. Purpose (include court and docket number if applicable): _____

3. Name of Fund: _____
(Include full name of candidate or committee on whose behalf fund was created)

4. Person Filing Reports:

Name: _____

Mailing Address: _____

City / State / Zip: _____

Phone Number: _____ E-mail Address: _____

5. Financial Institution where the account is located:

Bank Name: _____

Address: _____

City / State / Zip: _____

6. Candidate or Committee on whose behalf the fund was created:

Name: _____

Mailing Address: _____

City / State / Zip: _____

Phone Number: _____ E-mail Address: _____

7. Authorized Signature (Check One):

Candidate Candidate Committee Chair Candidate Committee Treasurer State Party Chair State Party Treasurer

Signature: _____ Date: _____

Name (please print): _____ Title: _____



Commonwealth
of Massachusetts

Form CPF 18E: Notice of Dissolution Segregated Fund Account

Office of Campaign and Political Finance

File with: Director
Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

(617) 979-8300
(800) 462-OCPF
www.ocpf.us
ocpf@mass.gov

Name of Fund: _____ CPF ID #: _____

Candidate or Committee on whose behalf the fund was created:

Name: _____ CPF ID #: _____

Person Filing Report:

Name: _____ Title: _____ Phone #: _____

I hereby notify OCPF that the above segregated fund account has been closed. I certify that:

- The purpose(s) for which the fund was organized has/have been accomplished;
- All of the donations received by the fund were reported in accordance with M.G.L. c. 55, s. 18E(b);
- The fund has no money and no debts; and
- Any remaining money in the fund's account was disposed of in a manner consistent with the residual funds clause of M.G.L. c. 55, s. 18.

SIGNED UNDER THE PENALTIES OF PERJURY:

Authorized Signature (Check One):

Candidate Candidate Committee Chair Candidate Committee Treasurer State Party Chair

State Party Treasurer

(Signature) Date: _____

Name (Please Print): _____ Title: _____



Commonwealth of Massachusetts

Form CPF M 101 SFA: STATEMENT OF ORGANIZATION SEGREGATED FUND ACCOUNT FOR CANDIDATE OR COMMITTEE Office of Campaign and Political Finance

File with: City or Town Clerk
or Local Election Official

NOTICE IS HEREBY GIVEN in accordance with the provisions of General Laws, Chapter 55, Section 18E and 970 CMR 1.20, as amended, of the organization of a segregated fund account as follows:

1. Type of Fund (check one): Inaugural Recount Legal Defense

2. Purpose (include court and docket number if applicable): _____

3. Name of Fund: _____
(Include full name of candidate or committee on whose behalf fund was created)

4. Person Filing Reports:

Name: _____

Mailing Address: _____

City / State / Zip: _____

Phone Number: _____ E-mail Address: _____

5. Financial Institution where the account is located:

Bank Name: _____

Address: _____

City / State / Zip: _____

6. Candidate or Committee on whose behalf the fund was created:

Name: _____

Mailing Address: _____

City / State / Zip: _____

Phone Number: _____ E-mail Address: _____

7. Authorized Signature (Check One):

Candidate Candidate Committee Chair Candidate Committee Treasurer

Signature: _____ Date: _____

Name (please print): _____ Title: _____

M.G.L. Chapter 55, section 18E states:

(a) Legal defense funds may be created by a candidate or the candidate's political committee to defend against a criminal matter or to pay costs associated with a civil matter that is not primarily personal in nature. Inauguration funds may be created by a candidate or the candidate's political committee to pay for the costs associated with an inaugural event. Recount funds may be created by a candidate or candidate's political committee to pay for the legal and other costs associated with a recount. Legal defense, inauguration, or recount funds shall be created separately from the candidate's campaign account or committee, and shall be subject to the following conditions: (1) assets of a political committee may not be used by the fund; (2) any donations received by the fund shall not be deposited into the candidate's campaign account or a committee account; and (3) donations to such fund shall not be used to benefit a political committee.

(b) Donations to a legal defense, recount, or inauguration fund, if not contributions, shall be disclosed to the director or, if made by a candidate or committee that does not file with the director, the city or town clerk, on or before the fifth day of the month following the month in which the donations are received, complete as of the last day of the preceding month, on forms to be prescribed by the director. The report shall disclose the name and address and employer of all persons donating more than \$50 during the reporting period, listed alphabetically, the amount of each such donation, and the total amount of donations received in the reporting period not otherwise reported.

(c) For purposes of this section, the term "donations" shall include donations in money or in-kind, and loans provided to legal defense, recount, or inauguration fund.

***This includes all monetary, in-kind donations and loans that are over \$50.**

09/23