

STATE OF MICHIGAN

DANA NESSEL, ATTORNEY GENERAL

Michigan Election Law:	Effect of conciliation agreements
Michigan Campaign Finance Act:	upon statements regarding the filing
	and payment of campaign finance
	statements and fees in candidate
	affidavits of identity.

Candidates who have satisfied the terms of their conciliation agreements and have otherwise complied with their filing and fee requirements under the Michigan Campaign Finance Act, MCL 169.201, *et seq.*, may be certified to the ballot upon proper completion and filing of their affidavit of identity under § 558 of the Michigan Election Law, MCL 168.558.

Opinion No. 7326

Date: June 21, 2024

The Honorable Jocelyn Benson
Michigan Secretary of State
430 W. Allegan Street
Richard H. Austin Building, 4th Fl.
Lansing, MI 48918

You have asked how the Michigan Campaign Finance Act (MCFA), MCL 169.201, *et seq.*, and the Michigan Election Law (Election Law), MCL 168.1, *et seq.*, should be interpreted with respect to candidates filing affidavits of identity who previously entered into conciliation agreements to resolve past campaign finance matters.

BACKGROUND

Under the Election Law, MCL 168.1 *et seq.*, persons seeking to run as candidates for various offices must file with the appropriate filing official an affidavit of identity (affidavit), along with the candidate's nominating petitions or filing fee, as applicable:

When filing a nominating petition, qualifying petition, filing fee, or affidavit of candidacy for a federal, county, state, city, township, village, metropolitan district, or school district office in any election, a candidate shall file with the officer with whom the petitions, fee, or affidavit is filed 2 copies of an *affidavit of identity*. A candidate nominated for a federal, state, county, city, township, or village office at a political party convention or caucus shall file an *affidavit of identity* within 1 business day after being nominated with the secretary of state. . . . [MCL 168.558(1) (emphases added).]

Section 558(4), of the Election Law requires certain information be included on an affidavit, and also provides for penalties, including disqualification, if those requirements are not met:

An affidavit of identity must include a signed and notarized statement that as of the date of the affidavit, all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the [MCFA] have been filed or paid; and a statement that the candidate acknowledges that making a false statement in the affidavit is perjury, punishable by a fine up to \$1,000.00 or imprisonment for up to 5 years, or both. . . . An officer shall not certify to the board of election commissioners the name of a candidate who fails to comply with this section, or the name of a candidate who executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section. [MCL 168.558(4) (emphases added).]¹

¹ A copy of the affidavit form and instructions can be found online on the Secretary of State's website at [Affidavit of Identity and Receipt of Filing \(michigan.gov\)](https://www.michigan.gov/affidavit) (accessed June 11, 2024.)

Based on this statutory provision, filing officials cannot certify to the ballot any candidate who completes an affidavit that incorrectly attests that all campaign finance statements, reports, or fees have been filed or paid (including for prior committees and candidacies) at the time the affidavit is filed. *Burton-Harris v Wayne Co Clerk*, 337 Mich App 215, 233 (2021) (holding a candidate whose affidavit contains a false statement cannot be certified). For this reason, filing officials advise candidates to be sure that all fees, statements, and reports have been paid and filed prior to submitting an affidavit.²

The MCFA imposes various reporting requirements on candidates and their committees, and the failure to file reports, correct errors or omissions in reports, or pay late fees may result in a determination that a violation has occurred. See, e.g., MCL 169.233. The Secretary of State is authorized to informally resolve certain MCFA violations through conciliation agreements:

If the secretary of state determines that there may be reason to believe that a violation of this act occurred, the secretary of state shall endeavor to correct the violation or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with the person involved. Unless violated, a conciliation agreement is a complete bar to any further civil or criminal action with respect to matters covered in the conciliation agreement. [MCL 169.215(10).]

As noted in your request, conciliation agreements are used in a variety of scenarios. In some cases, there is no disagreement about whether a violation of the

² The Secretary of State also recently promulgated administrative rules related to disqualification and the contents of affidavits. See AACCS, R. 168.1–168.4. [Link to Admin Rules 168.1 to 168.4](#) (accessed June 11, 2024).

MCFA occurred and the only question is the extent of fees to be paid or reports to be filed. In other situations, the candidate or committee agreeing to conciliation may not necessarily agree that a violation of the MCFA occurred but agrees to the conciliation to resolve the uncertainty. Conciliation agreements may include provisions by which the candidate or committee pays a lower amount in fees than that which would be assessed if a violation were found. Conciliation agreements may also include provisions requiring the candidate or committee to file reports, but they might not require the candidate or committee to file all reports owed over the period in question, as long as there is agreement to file reports that are sufficient to remedy the violation.

Analysis of the Question

Your request seeks to clarify whether a conciliation agreement that results in lower fees or fewer reports means that the affected candidate may then accurately state in a subsequent affidavit that “all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate’s election under the MCFA have been filed or paid.” MCL 168.558(4).

Your request — and this opinion — presume that a conciliation agreement has already been executed and satisfied by the time of any subsequent affidavit and do not address conciliation agreements that are pending when an affidavit containing an allegedly false statement has been filed by the candidate.

There are no previous court decisions addressing the effect of conciliation agreements on whether a candidate has made a false statement on their affidavit

concerning campaign finance reports or fees. But your request presents a straightforward issue of statutory interpretation.

The primary goal of statutory interpretation is to give effect to the Legislature's intent. *Bank of America, NA v First American Title Ins Co*, 499 Mich 74, 85 (2016). Statutory interpretation begins with examining the plain language of the statute. *Id.* When that language is clear and unambiguous, no further judicial construction is required or permitted, and it is presumed that the Legislature intended the meaning plainly expressed in the statute. *Gardner v Dep't of Treasury*, 498 Mich 1, 6 (2015). Also, "[u]nless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156 (2011).

On its face, the language of § 558(4) of the Election Law is clear and unambiguous as to what candidates must aver: "that as of the date of the affidavit, all statements, reports, late filing fees, and fines *required of the candidate* or any candidate committee organized to support the candidate's election under the Michigan campaign finance act . . . have been filed or paid." MCL 168.558(4)(emphasis added). Similarly clear is the language of § 215(10) of the MCFA as to the effect a conciliation agreement has on potential civil or criminal actions: "[u]nless violated, a conciliation agreement is a complete bar to any further civil or criminal action with respect to matters covered in the conciliation agreement." MCL 169.215(10) (emphasis added). But neither the language of

§ 558(4) nor the language of § 215(10) directly answers your question of whether a conciliation agreement that results in lower fees or fewer reports means that the affected candidate may then accurately state in a subsequent affidavit that “all statements, reports, late filing fees, and fines” that are “required” of the candidate or their committees have been filed or paid. However, when the intent behind the provisions is considered, the answer to your question becomes apparent.

As mentioned, § 215(10) of the MCFA provides that the Secretary of State can “correct [a] violation . . . by using informal methods such as . . . conciliation, . . . and may enter into a conciliation agreement with the person involved.” The statute goes on to provide that “[u]nless violated, a conciliation agreement is a complete bar to any further civil or criminal action with respect to matters covered in the conciliation agreement.” Reading these two sentences of § 215(10) together reveals an intent to allow the Secretary of State to informally address violations of the MCFA by entering into a conciliation agreement, which, by operation of law, fully and finally corrects violations of the MCFA as to the matters covered by the agreement.

As for the intent behind § 558(4) of the Election Law, a recent Attorney General opinion, OAG, 2023–2024, No. 7323 (October 4, 2023), addressed that issue. The question there was whether unpaid late fees that were assessed under the MCFA but were rendered uncollectible because of the expiration of the statute of limitations must be considered for purposes of the affidavit requirement in § 558(4). In analyzing the question, it was stated:

[I]t is apparent that the intent behind [§ 558(4)] is for a candidate to attest, under risk of criminal prosecution and not being placed on the ballot, that any prior noncompliance with the MCFA in regard to paying late filing fees and fines, or filing statements and reports, has been corrected, and no such fees, fines, statements, or reports remain outstanding. [OAG, 2023-2024, No. 7323.]

Considering that intent, my conclusion was that “a candidate who failed to pay all late fees that had been imposed under the MCFA is not in full compliance with the Act,” and that “even if a late filing fee is not collectible,” it remains “outstanding” for purposes of § 558(4). *Id.*

Significantly, however, the unpaid late filing fees at issue in that opinion were not the subject of a conciliation agreement. Again, § 215(10) encourages informal resolution of MCFA violations, and a conciliation agreement is one of the tools the Secretary of State uses to reach a full and final resolution. In other words, by operation of law, entering into and complying with a conciliation agreement means that no obligations under the MCFA remain and any outstanding matters that were the subject of the conciliation agreement are no longer an obligation of the candidate or their committee. There would be little reason for candidates or their committees to enter into conciliation agreements if doing so would not fully and finally resolve all outstanding obligations and satisfy all requirements under the MCFA and would leave them potentially barred from qualifying for any future ballot. Therefore, interpreting § 558(4) of the Election Law to mean that any statements, reports, or fees that are subject to a conciliation agreement “have been filed or paid” for purposes of the affidavit requirement is consistent with OAG, No. 7323 and the intent behind both § 558(4) of the Election Law and § 215(10) of the

MCFA. In terms of your question then, compliance with a conciliation agreement that results in lower fees or fewer reports means that the affected candidate may accurately state in a subsequent affidavit that “all statements, reports, late filing fees, and fines” that are “required” of the candidate or their committees have been filed or paid.

It is my opinion, therefore, that candidates who have satisfied the terms of their conciliation agreements and have otherwise complied with their filing and fee requirements under the Michigan Campaign Finance Act, MCL 169.201, *et seq.*, may be certified to the ballot upon proper completion and filing of their affidavit of identity under § 558 of the Michigan Election Law, MCL 168.558.

A handwritten signature in blue ink that reads "Dana Nessel". The signature is written in a cursive, flowing style.

DANA NESSEL
Attorney General