

# Agenda

## Item #18



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: January 20, 2015  
Re: Background Information: Requests for Waivers of Late-Filing Penalties

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At the last meeting, some Commissioners suggested reconsidering past practices in granting waivers of late-filing penalties.

To assist you, I have attached:

- a list of all requests for waivers of late-filing penalties considered in 2014,
- the relevant law authorizing the Commission to waive penalties.

The Commission staff stands ready to adjust our recommendations in the future, if you wish to change course. If you need any other information, please let me know.

Requests for Waivers of Late-Filing Penalties Considered in 2014						
Type of Filer	Name	Violation Type	Days Late	Prelim Penalty	Final Penalty	Meeting Date
BQC	MAINE GUIDES BQC	Late filed regular CFR	61	\$5,520.50	\$0.00	04/30/14
BQC	MAINE TRAPPERS BQC	Late filed regular CFR	84	\$4,622.52	\$0.00	04/30/14
BQC	MAINERS FOR FAIR BEAR HUNTING	Late filed 24-Hour Report	1	\$1,500.00	\$500.00	12/22/14
BQC	Committee for a Healthier, More Prosperous Maine (Jackson Lab)	Late filed regular CFR	21	\$4,330.20	\$500.00	12/22/14
PAC	MAINE CONSERVATION VOTERS ACTION FUND	Late filed 24-Hour Report	10	\$32,500.00	\$1,000.00	06/25/14
PAC	MAINE CONSERVATION VOTERS ACTION FUND	Late filed 24-Hour Report	10	\$32,500.00	\$1,000.00	06/25/14
PAC	Maine Forward PAC	Late filed 24-Hour Report	5	\$2,500.00	\$250.00	07/31/14
PAC	ALFOND BUSINESS, COMMUNITY & DEMOCRACY PAC	Late filed quarterly CFR	283	\$31,764.42	\$1,500.00	07/31/14
PAC	ALFOND BUSINESS, COMMUNITY & DEMOCRACY PAC	Late filed quarterly CFR	283	\$31,764.42	\$1,500.00	07/31/14
PAC	MAINE CREDIT UNION LEAGUE - PAC	Late filed 24-Hour Report	49	\$1,960.00	\$250.00	08/27/14
PAC	MAINE CREDIT UNION LEAGUE PAC	Late filed 24-Hour Report	49	\$1,960.00	\$250.00	08/27/14
PAC	SENATE DEMOCRATIC CAMPAIGN CMTE	Late filed quarterly CFR	110	\$14,437.40	\$500.00	08/27/14
PAC	SENATE DEMOCRATIC CAMPAIGN CMTE	Late filed quarterly CFR	110	\$14,437.40	\$500.00	08/27/14
PAC	Maine Citizens for Justice	Late filed 24-Hour Report	46	\$2,530.00	\$250.00	09/24/14
PAC	ACTBLUE MAINE PAC	Late filed 24-Hour Report	39	\$17,845.49	\$500.00	09/24/14
PAC	Committee to Rebuild Maine's Middle Class	Late filed regular CFR	53	\$5,435.68	\$500.00	09/24/14
PAC	BUILD MAINE PAC	Late filed 24-Hour Report	48	\$250.00	\$250.00	09/24/14
PAC	BUILD MAINE PAC	Late filed 24-Hour Report	48	\$250.00	\$250.00	09/24/14
PAC	MAINE SOCIETY OF ANESTHESIOLOGIST PAC	Late filed 24-Hour Report	22	\$1,040.00	\$250.00	11/24/14
PAC	MAINE SOCIETY OF ANESTHESIOLOGIST PAC	Late filed 24-Hour Report	22	\$1,040.00	\$250.00	11/24/14
PAC	EQUALITYMAINE PAC	Late filed IE Report	1	\$50.00	\$50.00	11/24/14
PAC	EQUALITYMAINE PAC	Late filed IE Report	1	\$50.00	\$50.00	11/24/14
PAC	EQUALITYMAINE PAC	Late filed IE Report	1	\$300.00	\$200.00	11/24/14
PAC	EQUALITYMAINE PAC	Late filed IE Report	1	\$300.00	\$200.00	11/24/14
PAC	MAINE ECONOMIC GROWTH COALITION	Late filed 24-Hour Report	17	\$650.76	\$166.00	12/22/14
PAC	MAINE ECONOMIC GROWTH COALITION	Late filed 24-Hour Report	17	\$650.76	\$166.00	12/22/14
PAC	MAINE ECONOMIC GROWTH COALITION	Late filed 24-Hour Report	16	\$1,136.96	\$167.00	12/22/14
PAC	MAINE ECONOMIC GROWTH COALITION	Late filed 24-Hour Report	16	\$1,136.96	\$167.00	12/22/14
PAC	MAINE ECONOMIC GROWTH COALITION	Late filed 24-Hour Report	8	\$800.00	\$167.00	12/22/14
PAC	MAINE ECONOMIC GROWTH COALITION	Late filed 24-Hour Report	8	\$800.00	\$167.00	12/22/14

Requests for Waivers of Late-Filing Penalties Considered in 2014						
Type of Filer	Name	Violation Type	Days Late	Prelim Penalty	Final Penalty	Meeting Date
Party Cmte	Maine Democratic Party	Late filed 24-Hour Report	48	\$4,800.00	\$750.00	08/27/14
Party Cmte	Maine State Democratic Committee	Late filed 24-Hour Report	48	\$4,800.00	\$750.00	08/27/14
Party Cmte	Somerset County Democratic Party	Late filed regular CFR	181	\$500.00	\$50.00	09/24/14
Party Cmte	Kennebunk Democratic Committee	Late filed semiannual report	111	\$500.00	\$75.00	11/24/14
Party Cmte	Kennebunk Democratic Committee	Late filed regular CFR	10	\$500.00	\$75.00	11/24/14
Party Cmte	Sagadahoc County Democratic Committee	Late filed 24-Hour Report	9	\$495.00	\$200.00	12/22/14
Candidate	WILLETTE, MICHAEL	Late filed 24-Hour Report	47	\$632.15	\$50.00	08/27/14
Candidate	GERRISH, KAREN	Late filed 24-Hour Report	45	\$465.75	\$100.00	08/27/14
Candidate	Lajoie, Dana	Late filed 24-Hour Report	48	\$979.20	\$100.00	08/27/14
Candidate	Lajoie, Dana	Late filed 24-Hour Report	48	\$979.20	\$100.00	08/27/14
Candidate	JUSKEWITCH, STEVEN	Late filed 24-Hour Report	48	\$736.00	\$150.00	08/27/14
Candidate	JUSKEWITCH, STEVEN	Late filed 24-Hour Report	48	\$736.00	\$100.00	08/27/14
Candidate	LEPAGE, PAUL	Late filed 24-Hour Report	41	\$5,000.00	\$500.00	08/27/14
Candidate	STEHLE, ALLEN	Late filed 24-Hour Report	40	\$800.00	\$50.00	08/27/14
Candidate	VOLK, AMY	Substantial misreporting in CFR	23	\$3,413.89	\$100.00	09/24/14
Candidate	DAVIDOFF, AMY	Failure to file regular CFR or IE report	5	\$94.48	\$94.48	09/24/14
Candidate	BROWN, PAIGE	Late filed regular CFR or IE report	6	\$283.44	\$100.00	09/24/14
Candidate	CAPEHART, GARY	Failure to file regular CFR or IE report	5	\$18.00	\$0.00	09/24/14
Candidate	LEWIS, BONNIE	Late filed election-related CFR	1	\$84.75	\$47.77	12/22/14
Candidate	HICKS, ROGER	Late filed regular CFR	12	\$44.28	\$44.28	12/22/14
Candidate	LEWIS, BONNIE	Late filed 24-Hour Report	1	\$159.25	\$47.77	12/22/14
Candidate	SMITH, DONALD	Late filed 24-Hour Report	10	\$563.87	\$200.00	12/22/14
Candidate	PAUL, RICHARD	Late filed 24-Hour Report	1	\$11.09	\$11.09	12/22/14

## 21-A MRS § 1020-A. FAILURE TO FILE ON TIME

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.



**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (AMD).]
- B. An error by the commission staff; [1999, c. 729, §5 (AMD).]
- C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD).]
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2009, c. 190, Pt. A, §13 (AMD).]

**3. Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

### **4. Basis for penalties.**

[ 2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§4 (RP) .]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing

period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

## **5. Maximum penalties.**

[ 2001, c. 470, §8 (AMD); T. 21-A, §1020-A, sub-§5 (RP) .]

**5-A. Maximum penalties.** Penalties assessed under this subchapter may not exceed:

- A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4; [2011, c. 389, §23 (AMD).]
- A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late; [2011, c. 389, §24 (NEW).]
- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late; [2011, c. 389, §25 (AMD).]
- C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or [2011, c. 558, §4 (AMD).]
- D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B. [2011, c. 558, §4 (AMD).]
- E. [2011, c. 558, §5 (RP).]

[ 2011, c. 558, §§4, 5 (AMD) .]

**6. Request for a commission determination.** If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[ 2013, c. 334, §17 (AMD) .]

**7. Final notice of penalty.** If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[ 2009, c. 302, §6 (AMD) .]

**8. Failure to file report.** The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

[ 2007, c. 443, Pt. A, §25 (AMD) .]

## 21-A M.R.S. § 1062-A. FAILURE TO FILE ON TIME

**1. Registration.** A political action committee required to register under section 1052-A or 1053-B or a ballot question committee required to register under section 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than \$2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

[ 2013, c. 334, §30 (AMD) .]



**2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §9 (AMD).]
- B. An error by the commission staff; or [1999, c. 729, §9 (AMD).]
- C. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2007, c. 443, Pt. A, §38 (AMD).]

[ 2009, c. 190, Pt. A, §29 (AMD) .]

**3. Basis for penalties.** The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%; [1995, c. 483, §21 (NEW).]
- B. For the 2nd violation, 3%; and [1995, c. 483, §21 (NEW).]

C. For the 3rd and subsequent violations, 5%. [1995, c. 483, §21 (NEW).]

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered calendar year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

[ 2007, c. 443, Pt. A, §39 (AMD) .]

**4. Maximum penalties.** The maximum penalty under this subchapter is \$10,000 for reports required under section 1056-B or section 1059, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late.

[ 2011, c. 389, §49 (AMD) .]

**5. Request for a commission determination.** If the commission staff finds that a political action committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the treasurer of the political action committee within 3 business days following the filing deadline informing the treasurer that a report was not received. If a political action committee files a report required under this subchapter late, a notice of preliminary penalty must be forwarded to the treasurer of the political action committee whose report is not received by 11:59 p.m. on the deadline date, informing the treasurer of the commission staff finding of violation and preliminary penalty calculated under subsection 3 and providing the treasurer with an opportunity to request a determination by the commission. A request for determination must be made within 14 calendar days of receipt of the commission's notice. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[ 2013, c. 334, §31 (AMD) .]

**6. Final notice of penalty.** After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this