

Agenda

Item #5



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

To: Commissioners

From: Benjamin Dyer, Political Committee and Lobbyist Registrar

Date: June 16, 2014

Re: Request for Waiver by National Association of Realtors Fund PAC

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The National Association of Realtors Fund PAC was required to file an 11-Day Pre-Primary Report, due on Friday, May 30, 2014. The PAC did not file the report until Monday, June 2, 2014. The PAC had no financial activity during the reporting period. Because there was no reported financial activity, the preliminary penalty was zero.

On June 6, 2014, the Commission staff sent a letter indicating to the PAC that the Commission staff had made a preliminary finding that the report was late, but that no penalty was due. The letter notified the PAC that it could request a waiver of the staff's finding of violation. Under 21-A M.R.S.A. § 1062-A(5), a PAC may request a determination by the Commission after the staff has notified the PAC of a preliminary finding of late filing and penalty. In implementing § 1062-A(5), the Commission staff has presumed that the PAC may request a waiver of *either* the penalty *or* the staff's preliminary finding that the PAC was late.

Through a letter from the association's taxation department, the PAC requests a waiver of the Commission staff's finding that the report was filed late, because:

- The PAC "inadvertently failed to hit the send button after completion of the report." (Since there is no "send" button in the Commission's e-filing system, we presume the PAC is referring to the "File" button.)
- The PAC has previously filed reports on time.
- The PAC had no financial activity during the period covered by the report.

#### **STAFF RECOMMENDATION**

The Commission staff has no reason to doubt the PAC's explanation that the PAC made an inadvertent error in not hitting the file button. The PAC used the current e-filing system in April 2014 to file a quarterly campaign finance report, which also contained no financial activity.

Nevertheless, it is the responsibility of the PAC to ensure that it complies with all aspects of the filing requirements. We do not see a convincing reason to waive the finding that the report was late. To consider this report on time would be contrary to some past Commission decisions, we believe, and would invite other waiver requests based on similar reasoning. This could delay the public's timely receipt of campaign finance information.

Thank you for your consideration of this memo.



Commission on Governmental Ethics and Election Practices  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine  
Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
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## 2014 CAMPAIGN FINANCE REPORT

### FOR POLITICAL ACTION COMMITTEES

COMMITTEE		TREASURER
NATIONAL ASSOCIATION OF REALTORS FUND 430 N. MICHIGAN AVE CHICAGO, IL 60611 PHONE: (312) 329-8239 EMAIL: KPASCHAL@REALTORS.ORG		JOHN PIERPOINT 430 N. MICHIGAN AVE. CHICAGO, IL 60611 PHONE: (312) 329-8260 EMAIL: JPIERPOINT@REALTORS.ORG
REPORT	DUE DATE	REPORTING PERIOD
11-DAY PRE-PRIMARY	05/30/2014	04/01/2014 - 05/27/2014

#### FINANCIAL ACTIVITY SUMMARY

RECEIPTS	TOTAL FOR PERIOD	TOTAL FOR YEAR
1. CASH CONTRIBUTIONS (SCHEDULE A)	\$0.00	\$0.00
2. OTHER CASH RECEIPTS (INTEREST, ETC.)	\$0.00	\$0.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS (LINE 1 + 2 + 3)	\$0.00	\$0.00
EXPENDITURES		
5. EXPENDITURES TO SUPPORT OR OPPOSE (SCHEDULE B)	\$0.00	\$0.00
6. OPERATING EXPENDITURES (SCHEDULE B-1)	\$0.00	\$0.00
7. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
8. TOTAL PAYMENTS (LINE 5 + 6 + 7)	\$0.00	\$0.00
CASH SUMMARY		
9. CASH BALANCE AT BEGINNING OF PERIOD	\$0.00	
10. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$0.00	
11. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$0.00	
12. CASH BALANCE AT END OF PERIOD	\$0.00	
OTHER ACTIVITY		
13. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$0.00	\$0.00
14. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
15. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	

I, KAREN PASCHAL, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: KAREN PASCHAL  
REPORT FILED ON: 06/02/2014  
LAST MODIFIED: 06/02/2014  
PRINTED: 06/18/2014  
COMMITTEE ID: 6260



NATIONAL  
ASSOCIATION of  
REALTORS®

## Finance & Tax Management

430 North Michigan Avenue  
Chicago, Illinois 60611-4087  
www.REALTORS.org

312.329.8200  
312.329.3299 (Fax)

June 13, 2014

STATE OF MAINE  
Commission on Government Ethics  
And Election Practices  
135 State House Station  
Augusta, ME 04333-0135

Dear Mr. Dyer,

We have received a notice of violation due to the late filing of the 11-Day Pre-Primary campaign finance report. Thank you again for your assistance with this matter. As noted in your notice, there was no financial activity during the reporting period. And I mentioned previously, we did make all attempts to file this report with your department in a timely manner. Unfortunately, we inadvertently failed to hit the send button after completion of the report, and therefore, the filing was late. We did receive your *general* email reminders, but because we believed our report had been filed, we did not respond. Given these circumstances and the fact that all other reports have been filed in a timely manner, we are requesting that you waive the violation.

If you have any questions or concerns, please contact me at [kpaschal@realtors.org](mailto:kpaschal@realtors.org) or via phone at 312-329-8239. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Karen Paschal".

Karen Paschal  
National Association of REALTORS  
Managing Director, Taxation



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

June 6, 2014

Mr. John Pierpoint, Treasurer  
National Association of Realtors Fund PAC  
430 N. Michigan Ave.  
Chicago, IL 60611

Re: Late Filing of 11-Day Pre-Primary Report

Dear Mr. Pierpoint:

The Commission staff has made a preliminary determination that the National Association of Realtors Fund PAC (the PAC) was late in filing its 11-Day Pre-Primary campaign finance report. The report was due by 11:59 p.m. on May 30, 2014, but was not filed until June 2. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1062-A(3)). There is no financial penalty for this late filing either because the report contained no financial activity or because the penalty is under \$10 and is automatically waived. Please be aware that this does not nullify the finding of a violation.

The PAC may make a written request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the PAC filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that the PAC made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

Please call me at (207) 287-4179 or send me an email at [benjamin.p.dyer@maine.gov](mailto:benjamin.p.dyer@maine.gov) if you have questions.

Sincerely,

Benjamin P. Dyer  
Political Committee and Lobbyist Registrar

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

PHONE: (207) 287-4179

FAX: (207) 287-6775

**Maine Revised Statutes**  
**Title 21-A: ELECTIONS**  
**Chapter 13: CAMPAIGN REPORTS AND FINANCES**

**21-A MRSA § 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 subchapter must be sent to the principal officer and the treasurer of the political action 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 principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission.

[ 2009, c. 302, §9 (AMD) .]

**7. List of late-filing committees.** The commission shall prepare a list of the names of political action committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1) or section 1059, subsection 2, paragraph C or D within 30 days of the date of the election and shall make that list available for public inspection.

[ 2007, c. 443, Pt. A, §41 (AMD) .]

**8. Failure to file.** A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

[ 2003, c. 628, Pt. A, §8 (AMD) .]

**8-A. Penalties for failure to file report.** The commission may assess a civil penalty for failure to file a report required by this subchapter. The maximum penalty for failure to file a report required under section 1056-B or section 1059 is \$10,000.

[ 2009, c. 190, Pt. A, §31 (AMD) .]

**9. Enforcement.** A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[ 2009, c. 302, §10 (RPR) .]

SECTION HISTORY

1995, c. 483, §21 (NEW). 1999, c. 426, §34 (AMD). 1999, c. 729, §9 (AMD). 2003, c. 628, §§A7-9 (AMD). 2007, c. 443, Pt. A, §§38-41 (AMD). 2009, c. 190, Pt. A, §§28-31 (AMD). 2009, c. 302, §§8-10 (AMD). 2011, c. 389, §49 (AMD). 2013, c. 334, §§30, 31 (AMD).

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