

Agenda

Item #4



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
Beth Hudson, Candidate Registrar

Date: August 15, 2014

Re: Request for Waiver of Late-Filing Penalty by Karen Gerrish

Karen Gerrish is a candidate for the Maine House of Representatives, District 20. She defeated her opponent in the Republican primary election and will be in the general election.

In the thirteen days before an election all candidates must file a report within 24 hours of receiving any single contribution of \$1,000 or more or making any expenditure of \$1,000 or more. Karen Gerrish made an expenditure of \$1,035 on June 4, 2014, but did not file a 24-Hour Report until July 20, 2014.

LEGAL REQUIREMENTS

Candidates are required to report any single contribution of \$1,000 or more received or single expenditure of \$1,000 or more made during the 13 days before an election within 24 hours of that transaction. (21-A M.R.S.A. § 1017(3)(C)) If the candidate is late in filing the 24-Hour Report, the amount of the penalty is set by a formula which takes into

consideration the amount of the transaction, the number of prior violations within a two-year period, and the number of days the report is late. (21-A M.R.S.A. § 1020-A(4-A))

DISCUSSION

On July 20, 2014, Karen Gerrish's treasurer filed the 42-Day Post-Primary report. When the treasurer entered a \$1,035 expenditure to Spectrum Marketing dated June 4, 2014, the e-filing system alerted the treasurer that a 24-Hour Report was overdue for that payment. The system created a 24-Hour Report for the expenditure, which the treasurer filed on July 20. Because the 24-Hour Report was due on June 5 (within 24 hours of making the payment), the 24-Hour Report was filed 45 days late.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount was calculated as follows:

Penalty Base Amount	\$1,035.00
Percentage	1%
Daily Accrual Rate	\$10.35
Days Late	45
Your Total Penalty	\$465.75

Through her attorney, William P. Logan, the candidate asks that the Commission reduce the penalty to an amount that reasonably corresponds to the severity of the violation and the harm caused by the violation. Mr. Logan argues that Ms. Gerrish is a first-time candidate and is not familiar with the intricacies of the Election Law and has no history of prior violations with the Ethics Commission. Mr. Logan also argues that no public harm was done because the expenditure was for a mailer, which contained a "paid for"

disclaimer and is a common expenditure for campaigns. Mr. Logan further argues that the penalty is disproportionate to the size of the campaign and expenditure and – because of the daily multiplier – is one-half of the actual expenditure amount itself.

STAFF RECOMMENDATION

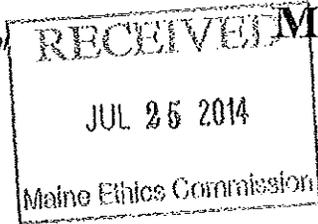
Violations of the 24-hour reporting requirements can be serious matters. 24-hour reports play an important role in informing the electorate about how money is changing hands in the critical days just before an election.

The Commission staff disagrees with the contention that there was no harm to the public, because Ms. Gerrish was in a contested primary election. Nevertheless, the preliminary penalty of \$465.75 is disproportionately large relative to the harm. Also, Ms. Gerrish is a first-time candidate and may be unfamiliar with all of the disclosure requirements for candidates. Ms. Gerrish and her treasurer quickly acknowledged their mistake, accepted responsibility for it and made the corrections necessary to provide the proper disclosure. Weighing these factors, the staff recommends waiving part of the preliminary penalty and assessing a penalty of \$100 for the late filing violation.

Thank you for your consideration of this memo.

IRWIN
TARDY
MORRIS

William P. Logan
wlogan@itmlaw.com



159 Main Street
P.O. Box 476
Newport, Maine 04953

207.368.2828 T
207.368.2822 F

July 23, 2014

Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, ME 04333

Re: *Request for Waiver of Preliminary Penalty -- Karen Gerrish*

Dear Jonathan:

I represent Karen Gerrish. Please accept this letter as a request for a waiver of the preliminary penalty amount assessed in the July 21, 2014 correspondence from Ms. Hudson. The reasons supporting this request are as follows:

1. **No Prior Violations/Experience of Candidate.** Ms. Gerrish has no history of prior violations of Ethics rules or statutes. She is also a first-time candidate for the Legislature. As such, she is not as familiar with the intricacies of the Election Law as well as the reporting requirements. Her lack of experience as a candidate militates in favor of the Commission granting her a waiver.
2. **No Public Harm.** There is no appreciable public harm resulting from the late-filed report. First, the expenditure was for a mailer. The mailer contained a disclaimer, so the public was aware of who had funded the expenditure. Secondly, this is a common expenditure for all campaigns and, as such, the delay in the public's knowledge of the exact amount of the expenditure resulted in no real appreciable harm to the public. Finally, the 24-hour reporting requirement was key provision of the "matching funds" statutory structure, in which the reporting requirement permitted ethics staff to swiftly disperse matching funds to MCEA candidates. Since matching funds are no longer available, this also militates in favor of waiving or reducing the preliminary penalty amount. For these foregoing reasons, there resulted no appreciable harm to the public on account of the late disclosure of the expenditure.

Jonathan Wayne
July 23, 2014
Page 2 of 2

3. Penalty Disproportionate to Campaign. The preliminary penalty is \$465.75, an amount that is disproportionate to the size of the campaign or the expenditure. First, the expenditure itself totaled \$1,035.00. Therefore, due solely to the daily multiplier, the penalty amount is almost one-half of the actual expenditure amount itself. Additionally, it is a significant penalty in relation to the actual contributions received by the campaign as a whole, *i.e.* over 10% of the total contributions as of the last filing date. Accordingly, we submit that this further militates towards the Commission granting a waiver to Ms. Gerrish.

Ms. Gerrish and her campaign intended to comply with the reporting requirements. Unfortunately, an error occurred and a single expenditure went unreported. Due to the time between the 24-hour reporting deadline was to be filed and the next scheduled reporting deadline, the error was, unfortunately, not discovered for some time. Once it was discovered, the campaign promptly filed the report (the 24-hour report was filed on 7/20/14, a Sunday).

In light of the foregoing facts, Ms. Gerrish requests that the Commission waive the preliminary penalty assessed by Commission Staff either in whole or in part. If the staff or the Commission requires any additional information, please feel free to contact me at your convenience. I plan to be present at the Commission meeting this matter is scheduled for to respond to any inquiries. Thank you for your attention to this request.

Sincerely,



William P. Logan, Esq.

cc: Karen Gerrish



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
Phone: 207-287-4179
Fax: 207-287-6775

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2014 CAMPAIGN YEAR

COMMITTEE		TREASURER	
MS. KAREN A GERRISH PO BOX 291 LEBANON, ME 04027 PHONE: (207) 651-5452 EMAIL: KARENAGERRISH@GMAIL.COM		DAVID A BOWLES 180 WESTVIEW DR SANFORD, ME 04073 PHONE: (207) 851-7986 EMAIL: DAVEB@METROCAST.NET	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	06/05/2014	06/04/2014 - 06/04/2014	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$1,035.00
3. TOTAL DEBTS	\$0.00

I, MR. DAVID A BOWLES, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: MR. DAVID A BOWLES
REPORT FILED ON: 07/20/2014
LAST MODIFIED: 07/20/2014
PRINTED: 08/13/2014
COMMITTEE ID: 7064

24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
<p>CNS Campaign consultants</p> <p>CON Contribution to other candidate, party, committee</p> <p>EQP Equipment (office machines, furniture, cell phones, etc.)</p> <p>FND Fundraising events</p> <p>FOD Food for campaign events, volunteers</p> <p>LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)</p> <p>MHS Mail house (all services purchased)</p> <p>OFF Office rent, utilities, phone and internet services, supplies</p> <p>OTH Other</p> <p>PHO Phone banks, automated telephone calls</p>	<p>POL Polling and survey research</p> <p>POS Postage for U.S. Mail and mail box fees</p> <p>PRO Other professional services</p> <p>PRT Print media ads only (newspapers, magazines, etc.)</p> <p>RAD Radio ads, production costs</p> <p>SAL Campaign workers' salaries and personnel costs</p> <p>TRV Travel (fuel, mileage, lodging, etc.)</p> <p>TVN TV or cable ads, production costs</p> <p>WEB Website design, registration, hosting, maintenance, etc.</p>			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
6/4/2014	SPECTRUM MARKETING 95 EDDY ROAD, SUITE 101 MANCHESTER, NH 03102	PRIMARY MAILER	MHS	\$1,035.00
TOTAL EXPENDITURES FOR CANDIDATE:				\$1,035.00



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

July 21, 2014

Ms. Karen A. Gerrish
PO Box 291
Lebanon, ME 04027

**Re: Late Penalty for 24-Hour Report of Contributions and Expenditures Campaign
Finance Report – Due 6/5/2014**

Dear Ms. Gerrish:

Preliminary penalty amount. You filed a 24-Hour Report for Contributions and Expenditures campaign finance report on July 20, 2014. Under the Election Law, the Commission must calculate a preliminary penalty for the late filing, based on the amount of financial activity during the report period, the number of days the report was filed late, and the candidate's filing record. The preliminary penalty for the late filing of your report is \$465.75. (Please refer to the enclosed penalty matrix for the calculation.) If you agree to pay the penalty, please use the enclosed billing statement within 14 days of receiving this letter. Please do not use Maine Clean Election Act funds to pay the penalty.

Requesting a waiver. You may ask the members of the Ethics Commission to waive the preliminary penalty due to mitigating circumstances (defined below). To request a waiver, please send a letter within 14 days of receiving this notice that contains a full explanation of the reasons you filed late. If you request a waiver, the Commission staff will notify you of the date and time of the public meeting at which the Commissioners will consider your request. You or a person you designate may appear at the meeting. The Commission staff will notify you of the Commissioners' decision shortly afterward.

Mitigating circumstances. The Election Law defines mitigating circumstances as: (1) a valid emergency, (2) an error by the Commission staff, (3) failure to receive notice of the filing deadline, or (4) relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements. Also, the Commission may waive a preliminary penalty 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.

Please call me at 287-4179 if you have any questions.

Sincerely,

Beth Hudson
Candidate Registrar

cc: David A. Bowles

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

July 21, 2014

The Commission staff has calculated a preliminary penalty of \$465.75 for the late filing of your 24-Hour Report of Contributions and Expenditures campaign finance report. Please pay the penalty or request a waiver within 14 days of receiving this notice. If the Commission does not receive a payment or waiver request, the Commission will send you a final notice requesting payment within 30 days.

To pay the penalty, submit a check or money order to the address below, along with the bottom half of this letter. Or, please pay online using a credit or debit card at the web address listed below. If you would like to request a waiver of the preliminary penalty, please see the instructions included in the attached letter.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay a late-filing penalty. If you have questions, please call Beth Hudson at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: MCGEEP

To Commission on Governmental Ethics and Election Practices
 135 State House Station
 Augusta, Maine 04333

From: Karen A. Gerrish

RE: Penalty for late filing of 24-Hour Report of Contributions and Expenditures
 Campaign Finance Report

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check or Money Order Payable to Treasurer, State of Maine
Or Pay Online at <http://www.maine.gov/online/ethics/penalties>

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES
21-A M.R.S.A. Section 1020-A(4-A)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty

Your penalty is calculated as follows:

Receipts/Expenditures:	\$1,035.00
Percent prescribed:	X <u>.01</u>
One Percent of total contributions	\$10.35
Number of days late:	X 45
Total penalty accrued:	<u>\$465.75</u>

A penalty begins to accrue on the day following the due date of the report.

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

MAXIMUM PENALTIES
21-A M.R.S.A. Section 1020-A(5-A)

\$5,000 for reports required to be filed 42 days before an election, 11 days before an election, 42 days after an election, and for 24-hour reports;
\$1,000 for semiannual reports.

21-A M.R.S.A. § 1017. REPORTS BY CANDIDATES

...

3-A. Other candidates. A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report. [2007, c. 443, Pt. A, §16 (AMD).]

B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election. [2007, c. 443, Pt. A, §16 (AMD).]

✓ C. Any single contribution of \$1,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of any election must be reported within 24 hours that contribution or expenditure. The candidate or treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. [2013, c. 334, §11 (AMD).]

D. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date. [2007, c. 443, Pt. A, §16 (AMD).]

D-1. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date, except that this report is not required for candidates for municipal office. [2009, c. 190, Pt. A, §5 (AMD).]

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of

\$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section. [2007, c. 443, Pt. A, §16 (AMD).]

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election. [1991, c. 839, §15 (AMD); 1991, c. 839, §34 (AFF).]

[2013, c. 334, §11 (AMD) .]

21-A MRSA § 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