

Agenda

Item #2



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: May 22, 2012

Re: Proposed Finding of Violation against Seven Candidates who have not Registered

Under 21-A M.R.S.A. § 1013-A(1)(A), candidates for gubernatorial, legislative, and county office are required to appoint a treasurer “[n]o later than 10 days after becoming a candidate” and to register with the Commission within 10 days of appointing a treasurer. Candidates who are enrolled in a political party were required to file nominating petitions with the Secretary of State by March 15, 2012. So, at the latest, the candidates were required to appoint a treasurer by March 25, 2012, and to register within 10 days after that.

Most candidates are aware of the registration requirement through prior campaign experience or because they have heard about it from other candidates or the political parties. To date, 356 House candidates and 86 Senate candidates have registered, along with 51 county candidates. After registration, most of the candidates are required to file campaign finance reports with our office.

After the March 15 deadline for petitions, the Commission staff sent forms packets and letters to unregistered candidates. (Samples are attached.) The staff undertook phone calls to unregistered candidates as well, when we could find their phone numbers.

Currently, seven candidates for the Maine House of Representatives have not registered:

Philip Polk
Doreen Christ
Gregory Kidd
Michael Carpenter

Alek Fortier
Andrew Capone-Sprague,
Debra Black

We mailed the attached Notice of Proposed Finding of Violation today to these seven candidates, notifying the candidates that they could be found of violation at your May 30 meeting.

We will continue to encourage these final seven candidates to register by May 30, and will provide you with an update at or before the meeting. If they do not register by May 30, the staff will recommend that the candidates be found in violation of 21-A M.R.S.A. § 1013-A(1)(A). Although a statute (21-A M.R.S.A. § 1020-A(1)) permits you to assess a penalty of \$10 for the violation, the staff is not recommending a monetary penalty.

We regret taking your time up with this matter, but sometimes public attention is necessary to focus candidates' attention on their responsibilities.



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

To: Legislative Candidates
From: Sandy Thompson, Candidate Registrar
Date: March 27, 2012
Re: Registering with the Ethics Commission

You are listed as a 2012 candidate for the Legislature with the Secretary of State's office. The Maine Election Law requires that candidates also register with the Ethics Commission. This letter is to provide you with the forms for registering as a candidate.

I have enclosed two "Getting Started" packets. Use either the green or blue packet depending on how you are financing your campaign:

- *Maine Clean Election Act candidates (GREEN packet)*. If you wish to participate in the Maine Clean Election Act program, please use the forms in the green packet. In addition to the registration form, make sure that you complete and sign the Declaration of Intent to Seek Certification as a Maine Clean Election Act Candidate (DOI) within five business days of when you begin to collect \$5 qualifying contributions. Any qualifying contributions collected more than five business days prior to the Commission receiving the DOI will not be counted. Please also complete the Vendor Form.
- *Traditionally financed candidates (BLUE packet)*. If you are accepting campaign contributions to pay for your campaign, please use the forms in the blue packet. At a minimum, please make sure you file the registration form and Voluntary Expenditure Limits form.

Please mail the completed forms to the Commission – the original signed forms are required. We also ask that you call our office at 287-4179 to receive a 2012 Candidate Guidebook. The book explains the campaign finance reports that you will be required to file as a legislative candidate. When you call, please let us know whether you will be in the Maine Clean Election Act program or will be traditionally financed.

Also, please call our office if you have other questions. Our website (www.maine.gov/ethics) has campaign forms and guides that you may find useful.

Thank you.

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

PHONE: (207) 287-4179

FAX: (207) 287-6775



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

Second Notice

To: Unregistered Legislative Candidates
From: Jonathan Wayne, Executive Director
Date: May 10, 2012
Re: Registering with the Ethics Commission

You are listed as a 2012 candidate for the Legislature with the Secretary of State's office. The Maine Election Law requires that candidates also register with the Ethics Commission before raising or spending any money for their campaigns. In March, we sent you a "Getting Started" packet, but we did not receive a registration form from you.

This letter is to provide you with the enclosed forms for registering as a candidate, if you have not already. Please complete both forms and return them to our office. We have also included a stamped envelope for your convenience.

If you do not plan on raising or spending any money or if you intend on withdrawing from the race after the primary election, you still have to register and file campaign finance reports with the Commission.

If you do not register as a candidate, the staff of the Commission will recommend that you be found in violation for failure to register at the Commission's meeting on May 30, 2012.

If you have any questions about these requirements, please call our office at 287-4179. Our website (www.maine.gov/ethics) also has campaign forms and guides and other information you may find useful.

Thank you.

Enclosures



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

Notice of Proposed Finding of Violation

To: Philip Polk, Doreen Christ, Gregory Kidd, Michael Carpenter, Alek Fortier,
Andrew Capone-Sprague, Debra Black

From: Jonathan Wayne, Executive Director *JW*

Date: May 22, 2012

Re: Registering with the Ethics Commission

As a candidate for elective office, you were legally required to register as a candidate with the Maine Ethics Commission by March 26, 2012 under 21-A M.R.S.A. § 1013-A. The Commission has sent you notices requesting that you register, but you have not.

This is to notify you that at the May 30, 2012 meeting of the Ethics Commission, the staff will recommend that the members of the Ethics Commission find you in violation for failing to register under 21-A M.R.S.A. § 1013-A(1)(A). The Commission members may assess a civil penalty of \$10 under 21-A M.R.S.A. § 1020-A(1) for the violation.

Please register using the attached form as soon as possible to avoid this enforcement action. Return the completed registration form to the Commission using the enclosed stamped envelope. Any registrations received before May 29 will be removed from the agenda for Commission action. If you have questions, please call our office 287-4179.

Thank you.

Enclosures

21-A MRSA §1013-A. REGISTRATION

1. **Candidates, their treasurers and political committees.** A candidate shall register the candidate's name and the name of a treasurer with the commission at least once in each legislative biennium, as provided in this section. A candidate may have only one treasurer, who must be appointed pursuant to paragraph A or B. For purposes of this section, "legislative biennium" means the term of office a person is elected to serve in the Legislature.

* A. No later than 10 days after becoming a candidate and before accepting contributions, making expenditures or incurring obligations, a candidate for state or county office or a candidate for municipal office who has not filed a written notice in accordance with section 1011, subsection 4, paragraph A shall appoint a treasurer. The candidate may serve as treasurer, except that a participating candidate, as defined in section 1122, subsection 6, or a candidate certified in accordance with section 1125 may not serve as treasurer, except that the candidate may serve as treasurer or deputy treasurer for up to 14 days after declaring an intention to qualify for campaign financing under chapter 14 until the candidate identifies another person to serve as treasurer. The candidate may have only one treasurer, who is responsible for the filing of campaign finance reports under this chapter. A candidate shall register the candidate's name and address and the name and address of the treasurer appointed under this section no later than 10 days after the appointment of the treasurer. A candidate may accept contributions personally or make or authorize expenditures personally, as long as the candidate reports all contributions and expenditures to the treasurer. The treasurer shall make a consolidated report of all income and expenditures and provide this report to the commission.

(1) A candidate may appoint a deputy treasurer to act in the absence of the treasurer. The deputy treasurer, when acting in the absence of the treasurer, has the same powers and responsibilities as the treasurer. A candidate certified in accordance with section 1125 may not serve as deputy treasurer. When a treasurer dies or resigns, the deputy treasurer may not assume the position of treasurer unless the candidate appoints the deputy treasurer to the position of treasurer. The candidate shall report the name and address of the deputy treasurer to the commission no later than 10 days after the deputy treasurer has been appointed. [2011, c. 389, §62 (AFF); 2011, c. 389, §9 (AMD) .]

B. A candidate may authorize one political committee to promote the candidate's election. No later than 10 days after appointing a political committee and before accepting contributions, making expenditures or incurring obligations, a candidate for state, county or municipal office shall appoint a treasurer of the political committee. The treasurer of the political committee is responsible for filing campaign finance reports under this chapter. No later than 10 days after appointing a political committee, the candidate shall register with the commission the following information regarding the political committee:

- (1) The name of the committee;
- (2) The name and address of the committee's treasurer;
- (3) The name of the candidate who authorized the committee; and
- (4) The names and addresses of the committee's officers. [1995, c. 483, §4 (AMD) .]

C. No later than 10 days after becoming a candidate, as defined in section 1, subsection 5, a candidate for the office of State House of Representatives or Senate shall file in writing a statement declaring that the candidate agrees to accept voluntary limits on political expenditures or that the candidate does not agree to accept voluntary limits on political expenditures, as specified in section 1015, subsections 7 to 9. A candidate who has filed a declaration of intent to become certified as a candidate under the Maine Clean Election Act is not required to file the written statement required by this paragraph.

The statement filed by a candidate who voluntarily agrees to limit spending must state that the candidate knows the voluntary expenditure limitations as set out in section 1015, subsection 8 and that the candidate is voluntarily agreeing to limit the candidate's political expenditures and those made on behalf of the candidate by the candidate's political committee or committees, the candidate's party and the candidate's immediate family to the amount set by law. The statement must further state that the candidate does not condone and will not solicit any independent expenditures made on behalf of the candidate.

The statement filed by a candidate who does not agree to voluntarily limit political expenditures must state that

the candidate does not accept the voluntary expenditure limits as set out in section 1015, subsection 8. [2007, c. 443, Pt. A, §7 (AMD).]

[2011, c. 389, §62 (AFF); 2011, c. 389, §9 (AMD) .]

2. Authorized political committees.

[1991, c. 839, §34 (AFF); 1991, c. 839, §5 (RP) .]

3. Party committees. The state, district and county committees of parties shall submit to the commission the names and addresses of all their officers and of their treasurers and the name and address of the principal paid employee, if any, within 30 days after the appointment, election or hiring of these persons. Municipal committees must file copies of the same information with the commission and the municipal clerk. District, county and municipal committees that provide their state party committees with the information required by this subsection to be submitted to the commission have met that requirement. No later than the 2nd Monday in April of each year in which a general election is scheduled, the state committee of a party shall submit a consolidated report, including the information required under this subsection, for the district, county and municipal committees of that party.

[1995, c. 483, §5 (AMD) .]

4. Reporting by registered treasurers. Any contribution accepted and any expenditure made or authorized by or on behalf of a candidate registered under this section or qualified under sections 335 and 336 or sections 354 and 355 must be recorded and reported as provided in sections 1016 and 1017.

[1991, c. 839, §34 (AFF); 1991, c. 839, §6 (AMD) .]

5. Changes in registration information. Every change in information required by this section to be reported to the commission shall be reported within 10 days of the date of the change.

[1989, c. 504, §§4, 31 (NEW) .]

SECTION HISTORY

1989, c. 504, §§4, 31 (NEW). 1989, c. 833, §1 (AMD). 1991, c. 839, §§4-6 (AMD). 1991, c. 839, §34 (AFF). RR 1995, c. 2, §35 (COR). 1995, c. 384, §1 (AMD). 1995, c. 483, §§4, 5 (AMD). 1999, c. 729, §1 (AMD). 2007, c. 443, Pt. A, §7 (AMD). 2007, c. 642, §14 (AFF). 2007, c. 642, §9 (AMD). 2009, c. 366, §12 (AFF). 2009, c. 366, §2 (AMD). 2011, c. 389, §62 (AFF). 2011, c. 389, §9 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Special Session of the 125th Maine Legislature, is current through December 31, 2011, and is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

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.

[1995, c. 483, §15 (NEW) .]

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) .]

[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.

[2011, c. 389, §22 (AMD); 2011, c. 389, §62 (AFF) .]

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, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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.

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

[2007, c. 443, Pt. A, §22 (AMD) .]

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; [2003, c. 628, Pt. A, §4 (AMD) .]

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or [2003, c. 628, Pt. A, §4 (AMD) .]

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

[2011, c. 389, §§23-25 (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 by certified mail 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