

Agenda

Item #7



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

To: Commissioners

From: Matthew Maret, PAC, Party & Lobbyist Registrar

Date: July 18, 2013

Re: Request for Waiver of Late Filing Penalty by Lobbyist Christopher O'Neil

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## INTRODUCTION

Lobbyist Christopher O'Neil was late in filing the monthly lobbying report covering the month of March 2013 for his client, Delta Dental Plan of Maine. Because Mr. O'Neil conducted lobbying activities for his client during March, he was required to file the standard "long-form" report for that month.<sup>1</sup> The report was due on April 16, 2013, but was not filed until April 17. On April 19, the Commission staff notified Mr. O'Neil of the \$50 preliminary penalty. Mr. O'Neil's requested a waiver through an April 29, 2013 letter.

## LEGAL REQUIREMENTS

All registered lobbyists are required to file monthly reports for each calendar month they are registered. Reports are due on the 15<sup>th</sup> day of the month following the month to which the report pertains.<sup>2</sup> (3 M.R.S.A. § 317) For late reports that are filed *within 24 hours* of the deadline, a preliminary penalty of \$50 is imposed by statute. (3 M.R.S.A. § 319) Otherwise, the penalty for a late report is \$100 per month.

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<sup>1</sup> If a lobbyist conducts no lobbying for a client during a calendar month, the lobbyist is permitted by statute to file a "short-form" report, which merely consists of a statement that no lobbying occurred during the month.

<sup>2</sup> Lobbyist reports are generally due on the 15<sup>th</sup> of the month. However, because April 15 was Patriots' Day, a state holiday, the report was due the next business day, April 16. See, 1 M.R.S.A. §71(13)

## **DISCUSSION**

On April 8, Mr. O'Neil completed, but did not file a short-form report for March. He also unintentionally entered detailed information concerning his March lobbying in the long-form report relating to the month of April. When the Commission staff notified Mr. O'Neil about the unfiled March report on April 17, Mr. O'Neil promptly corrected the situation by deleting the incorrect reports and filing a long-form March report.

Mr. O'Neil requests a waiver of the late filing penalty because of his efforts to file the report on time, his prompt remedial action after hearing of his mistake, and his record of compliance with the lobbyist disclosure laws. Specifically, Mr. O'Neil notes that the information included in the April long-form report filed on April 8 was correct for March and was unaltered when transferred into the correct report and filed.

## **STAFF RECOMMENDATION**

The Commission staff is sympathetic to Mr. O'Neil, but it recommends that the Commission deny the waiver and impose the full \$50 penalty. While the staff understands the circumstances and appreciates that Mr. O'Neil intended to file the report, the staff is concerned that granting a waiver would be inconsistent with past decisions by the Commission and could complicate future Commission decisions intended to hold lobbyists to high standards for timely filing. Further, the Legislature has chosen to set a reduced \$50 penalty for reports filed within 24 hours of a reporting deadline. In absence of sufficient mitigating circumstances,<sup>3</sup> the Commission staff does not recommend reducing the penalty any further.

Thank you for your consideration of this memo.

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<sup>3</sup> No technical issues were reported to or discovered by the Commission staff regarding the monthly reporting deadline.

**O'Neil Policy Consulting, Inc.**  
GOVERNMENT RELATIONS

Post Office Box 631 · Portland ME 04104  
(207) 590-3842 · cponeil22@gmail.com

Matthew Marett  
Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333-0135

April 29, 2013

RE: late-filed lobbyist report

Dear Matt:

Per your April 19 letter, Commission Staff has assessed O'Neil Policy Consulting a \$50.00 fine for its late-filed March report. I do not dispute that one of my reports was filed a day late, but I do write to request a waiver.

The records include email correspondence between you and me, beginning with your monthly courtesy reminder that is broadcast prior to the deadline to all lobbyists. Our correspondence and your filing records show that a week before the deadline, on April 8, I had *filled out* reports for all three of my clients/employers. Somehow one of the three reports was not *filed* in the sense that it was never transmitted to the Commission as complete. That might have been because of my incompetence or some other technical issue. Regardless, it was not delivered.

I wrote you upon receiving your late notice the day after the deadline, and within the day you and I figured it out. You discovered that my report was "in progress" as opposed to "filed," which then was entirely clear. You instructed me to click "file" and my report was in your hands instantly, unaltered from how it had sat in suspension for eight days.

I request the waiver based on the peculiar circumstances, bolstered by my record throughout 17 years of doing business with the Commission. Whether the Commission decides to grant the waiver or to impose the penalty, it has been a lesson well-learned; you can rest assured that I will henceforth be more vigilant about confirming successful transmission of my filed reports.

Thank you and the Commission for consideration of my request.

Chris O'Neil

### 3 §319. PENALTY



**1. Failure to file registration or report.** Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for every month the person fails to register or is delinquent in filing a report pursuant to section 317. If a registration or report is filed late, the commission shall send a notice of the finding of violation and preliminary penalty. The notice must provide the lobbyist with an opportunity to request a waiver of the preliminary penalty. If a lobbyist files a report required pursuant to section 317 within 24 hours after the deadline, the amount of the preliminary penalty is \$50. The commission may waive the fine or penalty in whole or in part if the commission determines the failure to register or report was due to mitigating circumstances or the fine or penalty is disproportionate to the level of experience of the lobbyist or the harm suffered by the public from the late registration or report. For purposes of this subsection, "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 fine or penalty in whole or in part; [2011, c. 179, §7 (NEW) .]

B. An error by the commission; or [2011, c. 179, §7 (NEW) .]

C. Circumstances determined by the commission to warrant the waiver of the fine or penalty in whole or in part, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with this chapter, including, but not limited to, unexplained delays in Internet service. [2011, c. 179, §7 (NEW) .]

[ 2011, c. 179, §7 (RPR) .]

**1-A. Notice of suspension.** Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the commission until such failure is corrected.

[ 1993, c. 446, Pt. B, §12 (AMD) .]

2.

[ 1979, c. 632, §3 (RP) .]

**3. Exemption.** Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the commission pursuant to section 317 if no lobbying has been performed during that special session.

[ 1993, c. 446, Pt. B, §13 (AMD) .]

#### SECTION HISTORY

1975, c. 576, (NEW). 1975, c. 621, §2 (RP). 1975, c. 724, (REEN). 1977, c. 696, §17 (AMD). 1979, c. 632, §3 (RPR). 1989, c. 114, (AMD). 1991, c. 465, §2 (AMD). 1993, c. 446, §§A15, B11-13 (AMD). 1993, c. 691, §22 (AMD). 2011, c. 179, §7 (AMD) .



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

April 19, 2013

Mr. Christopher O'Neil  
Delta Dental Plan of Maine  
P.O. Box 631  
Portland, ME 04104

RE: late-filed lobbyist report

Dear Mr. O'Neil,

The Commission staff has made a preliminary determination that a penalty of \$50.00 applies for the late filing of your March lobbyist disclosure report. See, 3 MRSA § 319. The report was due on April 16, 2013 and was not filed until April 17.

If you disagree with the preliminary penalty, you may request a waiver by submitting a statement, in writing, to the Commission stating the reason the report was filed late and requesting that the preliminary penalty be waived. All requests for waiver will be included on the agenda for the next Commission meeting.

If you agree with the preliminary penalty, please mail a check for the above amount to the Ethics Commission at 135 State House Station, Augusta, Maine 04333. All checks should be made out to "Treasurer, State of Maine." You may also pay online with a Visa or MasterCard by visiting [www.maine.gov/ethics](http://www.maine.gov/ethics) and selecting the "penalty payment" option.

Please either pay the preliminary penalty or submit a request for waiver within 14 days of the date of this letter. Please direct any questions you may have to me at (207) 287-6221 or [Matthew.Marett@Maine.gov](mailto:Matthew.Marett@Maine.gov).

Sincerely,

  
Matthew Marett  
PAC, Party & Lobbyist Registrar

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Payment Receipt

From: Mr. Christopher O'Neil, Delta Dental Plan of Maine  
RE: Penalty for late filing of March 2013 Lobbyist Disclosure Report (\$50.00).  
Enclosed: \$ \_\_\_\_\_ Check/M.O. No.# \_\_\_\_\_

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

## Marett, Matthew

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**From:** Marett, Matthew  
**Sent:** Friday, April 19, 2013 1:34 PM  
**To:** 'Christopher O'Neil'  
**Subject:** RE: Late Lobbyist Reports

Mr. O'Neil,

Thanks for filing your report. I wish I had the authority to grant a waiver of the preliminary penalty. Unfortunately, only the Commission can grant waivers. I am mailing you a letter with the preliminary penalty information (\$50). The letter includes information about requesting a waiver. I would encourage you to request a waiver if you believe the penalty should be waived.

Please let me know if you have any questions.

Sincerely,

Matt Marett  
Maine Ethics Commission  
PAC, Party & Lobbyist Registrar  
(207) 287-6221

**From:** Christopher O'Neil [mailto:cponeil22@gmail.com]  
**Sent:** Wednesday, April 17, 2013 11:23 AM  
**To:** Marett, Matthew  
**Subject:** Re: Late Lobbyist Reports

Done. Thank you, Matt.

I'm not sure if you can extend leniency re: the penalty, based on my (apparently inept) attempt to file on April 8.

Chris

On Apr 17, 2013, at 11:09 AM, Marett, Matthew wrote:

Mr. O'Neil,

Thanks for the e-mail.

The friends of Maine's Mountains report is listed as "in-progress (A)" which means it was filed and then re-opened. You should check the report to make sure the information in it is accurate then re-file it.

You can delete the Delta Dental short-form report. There is a delete button to the right of the report name when you access the "short-form report" menu.

Regarding the March and April long-form reports for Delta Dental, you should complete and file the March report then delete the April report.

Thanks again, and please let me know if you have any further questions.

Sincerely,

Matt Marett  
Maine Ethics Commission  
PAC, Party & Lobbyist Registrar  
(207) 287-6221

**From:** Christopher O'Neil [<mailto:cponeil22@gmail.com>]

**Sent:** Wednesday, April 17, 2013 10:23 AM

**To:** Marett, Matthew

**Subject:** Re: Late Lobbyist Reports

Matt -

I filed March long forms on April 8 for:

- Maine Appalachian Trail Club
- Delta Dental
- Friends of Maine's Mountains

The site shows my March report for Maine Appalachian Trail Club was timely filed on April 8.

But my March report for Friends of Maine's Mountains, filed within minutes of the above report, is listed as "In-Progress."

I have no idea where the Delta Dental March short form came from, so I assume I can delete it.

Also unexplainable is the Delta Dental March long form, which is listed as "In-Progress" AND as an April report. All the information therein is correct, except the reporting month.

So it looks like I have issues with the Friends and Delta reports. Please confirm your instructions.

Thanks again.

Chris

Christopher P. O'Neil  
O'Neil Policy Consulting, Inc.  
Government Relations  
PO Box 631  
Portland, ME 04104  
[cponeil22@gmail.com](mailto:cponeil22@gmail.com)  
(207) 590-3842  
Sent from my mobile device

On Apr 17, 2013, at 9:43 AM, "Marett, Matthew" <[Matthew.Marett@maine.gov](mailto:Matthew.Marett@maine.gov)> wrote:

Mr. O'Neil,

You have an in-progress short-form report (indicating no lobbying was done) for March and an in-progress long-form report for April. The April report should cover the current month and is not due until May 15. If you did not do any lobbying in March, please file the short-form report. If you did any lobbying in March, regardless of the number of hours, please delete the March short-form report, and then add and complete a long-form report for March. Please let me know if you have any questions.

Sincerely,

Matt Marett  
Maine Ethics Commission  
PAC, Party & Lobbyist Registrar  
(207) 287-6221

**From:** Christopher O'Neil [<mailto:cponeil22@gmail.com>]  
**Sent:** Wednesday, April 17, 2013 9:00 AM  
**To:** Marett, Matthew  
**Subject:** Re: Late Lobbyist Reports

Hello Matt.  
Please check my three reports filed April 8 and let me know if I am ok.  
Thank you.  
Chris

Christopher P. O'Neil  
O'Neil Policy Consulting, Inc.  
Government Relations  
PO Box 631  
Portland, ME 04104  
[cponeil22@gmail.com](mailto:cponeil22@gmail.com)  
(207) 590-3842  
Sent from my mobile device

On Apr 17, 2013, at 8:52 AM, "Marett, Matthew" <[Matthew.Marett@maine.gov](mailto:Matthew.Marett@maine.gov)> wrote:

You are receiving this message because you have not filed a lobbyist report for the month of March. Reports were due by 11:59 p.m. last night, April 16, 2013. Reports filed today will be assessed a late penalty of \$50. The penalty jumps to \$100 for all reports filed after today. Please file your March report as soon as possible. Let me know if you have any questions.

Sincerely,

Matt Marett  
PAC, Party & Lobbyist Registrar  
Maine Ethics Commission

Mailing: 135 State House Station  
Augusta, Maine 04333  
T: (207) 287-6221

**Christopher P. O'Neil**  
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**(207) 590-3842**

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