Agenda Item #6

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: August 9, 2012

Re: Request for Waiver of Late Filing Penalty by Arthur Kyricos

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Arthur Kyricos is a first-time candidate for Maine Senate, District #1 in York County. He is participating in the Maine Clean Election Act program. He was required to file a campaign finance report 42 days after the primary election on Tuesday, July 24, 2012 at 11:59 p.m. He filed the report the following morning, after receiving word from the Commission staff that he was late. The report disclosed three transactions: he received the standard MCEA payment of $18,124 for the general election, and he made two expenditures totaling $248 for campaign shirts and business cards. The amount of the preliminary penalty is $181.24 (one percent of total receipts for the period).

Mr. Kyricos requests a waiver because:

- He is a first-time candidate.
- On Thursday, July 19 (the day before he was to leave for a vacation), he spoke to Commission Registrar Sandy Thompson concerning a different filing requirement (a statement of the sources of his personal income). He became confused and believed that he was only required to file one time-sensitive report.

- The late report did not harm taxpayers or the public treasury, and there was no financial damage to any party.
- His previous reports were filed on time. (This year, he filed a seed money report on April 19 when requesting MCEA funding and he filed an 11-day pre-primary report one day early on May 31.)

Staff Recommendation

The Commission staff believes that Mr. Kyricos is acting in good faith, and that his lack of experience is a contributing factor to the late filing. Also, the harm to the public was limited. The report was filed 10 hours late and consisted of only three transactions. Because Mr. Kyricos was not in a contested primary election, he made only two expenditures during the period covered by the report. The amount of the general election MCEA payment ($18,124) is a standard amount that has been publicly available all year. Nevertheless, some penalty is appropriate to underscore that candidates need to meet the financial disclosure deadlines. Also, the candidate presumably received notice of the July 24 deadline in the form of a filing schedule and a pre-deadline reminder newsletter.

The Commission staff recommends waiving 75% of the preliminary penalty and assessing a penalty of $45.31, because the amount of the preliminary penalty ($181.24) is disproportionate to the harm to the public from the late disclosure and the level of experience of the candidate.

Thank you for your consideration of this memo.

RECEIVED
AUG 03 2012
Maine Ethics Commission

Arthur Kyricos

P.O. Box 574

York Harbor, Maine 03911

August 1, 2012

Attention: Sandy Thompson

Commission on Governmental Ethics

And Election Practices

135 State Street

Augusta, Maine 04333-0135

Dear Ms. Thompson:

I am in receipt of your letter dated July 30th in which you have imposed a preliminary penalty for late filing of $181.24

The purpose of this letter is to request a waiver of that penalty for the following reasons:

1. I am a first time candidate. For that reason I have been in constant contact with you, simply because we want to follow the rules that we have agreed to. After all this is not our money.
2. There was no intent to not be adherent to the Maine Clean Elections Laws as evidenced by the detail and timeliness of our other reports already filed.
3. There has been no harm to the taxpayers, or loss of the People's money.
4. On July 19th I called your office, the day before I was to go on vacation, in a bona fide effort to make sure that I understood the requirements of the Sources of Income Report as I did not want to be untimely with anything while away. Unfortunately in the ensuing conversation I became confused because I believed that there was only one report which was time sensitive, when in fact there were actually two.
5. Please note that I knew that I would not be getting good reception on the island that my family and I were going on to. It was for that reason that I called you in advance of leaving. (Even though you are always nice to me I am at times both embarrassed and feel like I am imposing because a lot of this stuff is new to me, and I have to keep asking you so many questions.) Mid week I had occasion to go to shore and it was then that I saw that you had tried to both call me and e-mail me three times. I immediately called you and we filed the report at that time.
6. Lastly, since there was no financial damage to any party, I respectfully ask the Commission to waive the preliminary penalty because it is excess of the inadvertent offence.

Thank you for taking the time to consider this.

Respectfully,

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

July 30, 2012

BY CERTIFIED MAIL AND REGULAR MAIL
Mr. Arthur Kyricos
P.O. Box 574
York Harbor, ME 03911

Re: Late 42-Day Post-Primary Campaign Finance Report Due 7/24/2012

Dear Mr. Kyricos:

Preliminary penalty amount. You filed a 42-Day Post-Primary campaign finance report on 7/25/2012. 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 $181.24. (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,

Sandy Thompson
Candidate Registrar

cc: Crystal Kyricos (by regular mail)

July 30, 2012

Mr. Arthur Kyricos
P.O. Box 574
York Harbor, ME 03911

The Commission staff has calculated a preliminary penalty of $181.24 for the late filing of your 42-Day Post-Primary 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 Sandy Thompson at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: MCGEEP
Fund: 014 Approp: 02

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

From: Mr. Arthur Kyricos

RE: Penalty for late filing of 42-Day Post-Primary Campaign Finance Report

Penalty ID: 1886

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
X .01	Percent prescribed for first violation
$25.00	One percent of total contributions
X 2	Number of calendar days late
$50.00	Total penalty

Arthur Kyricos

Your penalty is calculated as follows:

Receipts/Expenditures:	$ 18,124.00
Percent prescribed:	1%
	$ 181.24
Number of days late:	X 1
Total penalty accrued:	$ 181.24

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.

Revised 6/08

21-A M.R.S.A. §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).]