

Agenda

Item #4



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 12, 2014  
Re: Request for Waiver of Late-Filing Penalty by Newell Augur

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Lobbyist Newell Augur was late in filing monthly reports covering March 2014 for four clients (Home Care & Hospice Alliance of Maine; Home Care of ME; Maine Beverage Association; and Seniors Plus). Because Mr. Augur conducted no lobbying activity for these clients during March, he filed a “short form” lobbying report.<sup>1</sup> The lobbying reports were due on April 15, 2014, but were filed one day late on April 16, 2014. On April 17, 2014 the Commission staff notified Mr. Augur of the preliminary penalty of \$50 per report. Mr. Augur requested a waiver through a May 27, 2014 email.

#### LEGAL REQUIREMENTS

Lobbyists are required to register once they lobby in excess of 8 hours in any calendar month, but also may register any time before that threshold is reached. (3 M.R.S.A. §312-A(10), 3 M.R.S.A. §313) Once registered, all lobbyists are required to file monthly reports for each calendar month they are registered. The statute states that “every registered lobbyist” shall file monthly reports due on the 15<sup>th</sup> day of the next 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.

**1. Monthly session reports.** During the period in which the Legislature is in session, every registered lobbyist shall file with the commission, no later than 11:59 p.m. on the 15th calendar day of each month, a report concerning the lobbyist's activities for the previous month regarding each employer.

(3 M.R.S.A. § 317) The Commission staff has, therefore, regularly advised that once a lobbyist has registered, he or she must file a monthly report that covers the month in which the candidate registered – regardless when the lobbyist exceeded the 8-hour threshold. When reports are filed late, the preliminary penalty is generally \$100 per month. For late reports that are filed within 24 hours of the deadline, the preliminary penalty is \$50 – an automatic 50% reduction. (3 M.R.S.A. § 319)

## **DISCUSSION**

On March 11, 2014, Tanya Bentley used the Commission's online filing system to register Mr. Augur as a lobbyist for the 2014 lobbying year. Ms. Bentley files reports on Mr. Augur's behalf and has done so for the past 5 years. She spoke with Assistant Director Paul Lavin, who assisted her in registering Mr. Augur and his clients. When Ms. Bentley indicated Mr. Augur had not surpassed 8 hours of lobbying during the month of February, Mr. Lavin removed the February lobbyist report from Mr. Augur's table of reports due (due March 17, 2014 because the 15<sup>th</sup> fell on the weekend). Ms. Bentley admits she misunderstood this to mean that although Mr. Augur was now registered, she did not have to file reports on his behalf until he surpassed 8 hours of lobbying activity in a calendar month per client. Mr. Augur and Ms. Bentley request a waiver of the penalty

in this matter based on Ms. Bentley's misunderstanding and Mr. Augur's record of filing reports on time (two late filing penalties, in 2007 and 2008).

#### **STAFF RECOMMENDATION**

Mr. Augur registered as a lobbyist for 2014 on March 11, 2014. He was required to file a report on April 15, 2014 covering the month of March. While the Commission staff understands that Ms. Bentley simply misunderstood the reporting requirements and that there was no lobbying activity to report, the staff is concerned that granting a waiver would be inconsistent with past advice or decisions by the Commission and could complicate future Commission decisions 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 the absence of any other sufficient mitigating circumstances, the Commission staff recommends the Commission find that the violations occurred and impose the full \$50 penalty on each filing, for a total penalty of \$200.

Thank you for your consideration of this memo.

**Dyer, Benjamin P**

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**From:** naugur@mainelobby.com  
**Sent:** Tuesday, May 27, 2014 10:39 AM  
**To:** Lavin, Paul; Dyer, Benjamin P  
**Cc:** Bentley Tanya  
**Subject:** Fwd: Newell Augur Lobbyist Registrations

paul and ben

my apologies for the tardiness in sending this email. i wanted to make a request for a waiver of the \$200 penalty assessed last month for the four lobbyist reports that were filed a day late. i did receive hard copies of the forms from ben and then gave those to tanya figuring she would need to make the request since she was the one who had the pertinent information (i.e. the conversations with both of you) that would justify the waiver or reduction in the penalty. again, my apologies for not putting in some type of a place holder for that. i am somewhat hamstrung by the fact that i was not privy to the conversations that she had with either of you (other than the email that ben sent to tanya which she forwarded to me a couple weeks ago) so i would not have been able to provide any explanation as to why the filings were a day late (short of citing the misunderstanding of the rule on tanya's part). she does all of my ethics filings and has since 2009. i pay her employer, eaton peabody consulting group, for her time; she is not in my employ nor does she operate as an independent contractor. other than one error i made back in 2007, i believe all of my ethics commission registrations and monthly filings have been on time.

i appreciate any consideration you and the commission can give to this request. please don't hesitate to contact me if you have any other questions.

best,

newell

Augur & Associates  
5 Wade Street  
Augusta, ME 04330

office phone 620 1030  
cell phone 446 3430

## Dyer, Benjamin P

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**From:** Bentley, Tanya <tbentley@eatonpeabodyconsulting.com>  
**Sent:** Wednesday, June 11, 2014 4:43 PM  
**To:** Dyer, Benjamin P  
**Subject:** RE: Newell Augur Lobbyist Registrations

Ben,

There seems to be a misunderstanding on my part. I file all the reports for Newell and have for 5 or so years. I thought in the past you would register as a lobbyist which just informs the public and anyone interested. I also thought you didn't have to file anything unless you hit your 8 hours. My understanding is that Newell didn't hit 8 hours however he thought he should still register to let people know. When I registered Newell, Paul had asked if he hit 8 hours and I replied no, so he took away the February report so my assumption was that I didn't have to file unless he hit 8 hours. I was misinformed and assumed wrong!

Thanks for the explanation as I have also talked with my co-worker Tiffany Leonard who also does filing for our clients and I now have a better understanding for reporting. Unfortunately my misunderstanding will cost Newell a lot of money as I'm the one who he pays to file these reports for him, I hope that you can waive the penalty for Newell at this time.

Thanks,  
Tanya

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**From:** Dyer, Benjamin P [<mailto:Benjamin.P.Dyer@maine.gov>]  
**Sent:** Tuesday, May 13, 2014 3:48 PM  
**To:** Bentley, Tanya  
**Cc:** Lavin, Paul  
**Subject:** RE: Newell Augur Lobbyist Registrations

Ms. Bentley,

Title 3, Section 317(1) requires "During the period in which the Legislature is in session, every registered lobbyist shall file with the commission, no later than 11:59 p.m. on the 15<sup>th</sup> calendar day of each month, a report concerning the lobbyist's activities for the previous month regarding each employer." Eight hours of lobbying is a threshold to registration, not reporting. A person does not meet the definition of lobbyist, Title 3, Section 312-A(10), until they have "engage[d] in lobbying in excess of 8 hours in any calendar month." Once Mr. Augur engaged in over 8 hours of lobbying in a calendar month, he was required to register as a lobbyist. You registered Mr. Augur for each of his clients on March 11, 2014. Thus, you had to file a report covering the month of March, and will have to continue to file reports through the end of the lobbying year or until Mr. Augur requests a non-session waiver. In addition, once registered you must report any lobbying activity, not just lobbying activity which exceeds 8 hours.

I see you filed a "no activity" short form for both March and April for all of Mr. Augur's clients. It seems likely that these reports are incorrect. Based on what you are saying in your email, it is likely he had some lobbying activity, which should have been reported. If this is the case, you will need to amend the reports to accurately reflect Mr. Augur's lobbying activity on behalf of all of his clients.

There is a process for requesting that the Ethics Commission waive an assessed penalty. I mailed the notices of violation to Mr. Augur on April 17, 2014 and I expected to hear from him earlier if he was requesting a waiver. If he is requesting a waiver pursuant to Title 3, Section 319, it needs to be in to us by May 16, 2014 so we can get it on the agenda for the Commission meeting on May 28, 2014.

Please contact me if you have further questions.

Regards,

Benjamin P. Dyer  
Political Committee and Lobbyist Registrar  
Maine Ethics Commission

Mailing: 135 State House Station  
Augusta, Maine 04333  
T: (207) 287-6221  
[benjamin.p.dyer@maine.gov](mailto:benjamin.p.dyer@maine.gov)

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**From:** Bentley, Tanya [<mailto:tbentley@eatonpeabodyconsulting.com>]  
**Sent:** Tuesday, May 13, 2014 2:46 PM  
**To:** Lavin, Paul  
**Subject:** RE: Newell Augur Lobbyist Registrations  
**Importance:** High

Paul,

I guess I'm a little confused.. Newell said he received a bill for \$200.00 for penalties incurred for not filing March's reports. When I registered Newell as on lobbyist on March 11<sup>th</sup> you asked me if he had lobbied more than eight hour and I said no. You took February out of the system therefore I had an understanding that I didn't need to do anything further. Then comes March.. Newell again didn't it 8 hours so I did nothing.. until I received a note from Ben stating we have a penalty... I did not understand that I had to complete a report (now known as a short form) because you had taken care of the last one because he didn't hit his 8 hours, therefore I didn't think there was anything I needed to do. Apparently I misunderstood our phone conversation.

Is there anything Ethic's can do to forgive my misunderstanding to your communication and waive the penalty?

Thanks,  
Tanya



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

April 17, 2014

Mr. Newell Augur, Esq.  
 5 Wade St.  
 Augusta, ME 04330

Re: Late-Filed Lobbyist Report

Mr. Augur:

The Commission staff has made a preliminary determination that a penalty of \$50 applies for the late filing of the March lobbyist disclosure report. See, 3 MRSA § 319. The report was due on April 15, 2014 and was not filed until April 16th.

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 do not intend to seek a waiver of the preliminary penalty, please mail a check, payable to "Treasurer, State of Maine," for the above amount to the Ethics Commission at 135 State House Station, Augusta, Maine 04333. You may also pay with a Visa or MasterCard online at [www.maine.gov/ethics](http://www.maine.gov/ethics) by 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) 287-4179 or [benjamin.p.dyer@maine.gov](mailto:benjamin.p.dyer@maine.gov).

Sincerely,

Benjamin P. Dyer  
 Political Committee and Lobbyist Registrar

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*Please return this portion with your payment. Thank you.*

From: Mr. Newell Augur for Home Care & Hospice Alliance of Maine  
 Re: Penalty for late filing of March 2014 Lobbyist Disclosure Report (\$50.00).  
 Enclosed: \$ \_\_\_\_\_ Check/M.O. No. # \_\_\_\_\_

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

PHONE: (207) 287-4179

FAX: (207) 287-6775



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135 STATE HOUSE STATION  
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04333-0135

April 17, 2014

Mr. Newell Augur, Esq.  
5 Wade St.  
Augusta, ME 04330

Re: Late-Filed Lobbyist Report

Mr. Augur:

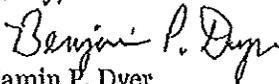
The Commission staff has made a preliminary determination that a penalty of \$50 applies for the late filing of the March lobbyist disclosure report. See, 3 MRSA § 319. The report was due on April 15, 2014 and was not filed until April 16th.

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.

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Sincerely,

  
Benjamin P. Dyer  
Political Committee and Lobbyist Registrar

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*Please return this portion with your payment. Thank you.*

From: Mr. Newell Augur for Maine Beverage Association  
Re: Penalty for late filing of March 2014 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

Maine Revised Statutes

Title 3: LEGISLATURE

Chapter 15: LOBBYIST DISCLOSURE PROCEDURES

3 MRSA § 317. REPORTS

Reports required by this section must be on forms prescribed or approved by the commission. The forms must provide for a sworn statement that the persons signing the report acknowledge the truth and completeness of all the information contained therein. [1993, c. 691, §18 (RPR) .]

✓ **1. Monthly session reports.** During the period in which the Legislature is in session, every registered lobbyist shall file with the commission, no later than 11:59 p.m. on the 15th calendar day of each month, a report concerning the lobbyist's activities for the previous month regarding each employer.

Every lobbyist shall report that lobbyist's lobbying activities for each month that the Legislature is in session, even if no lobbying has been performed or compensation or reimbursement for expenses received for the month. In the case of a lobbyist representing multiple employers, if no lobbying or services in support of lobbying were performed, one report listing each employer on whose behalf no lobbying was conducted may be submitted. The monthly report must contain the following information:

- A. The month to which the report pertains; [1979, c. 632, §2 (RPR) .]
- B. The name and address of the lobbyist and employer; [1979, c. 632, §2 (RPR) .]
- C. The names of the individuals who lobbied during the month; [1979, c. 632, §2 (RPR) .]
- D. The specific dollar amount of compensation received for lobbying activities, as defined in section 312-A, subsection 9, during the month. The amount of compensation received for lobbying officials in the legislative branch, officials in the executive branch and constitutional officers must be reported separately.

In the case of a regular employee, the specific dollar amount must be computed by multiplying the number of hours devoted to the preparation of documents and research for the primary purpose of influencing legislative action and to lobbying by the employee's regular rate of pay based on a 40-hour week; [2007, c. 630, §14 (AMD) .]

E. The specific dollar amount of expenditures made or incurred by the lobbyist during the month that is the subject of the report for purposes of lobbying as defined in section 312-A, subsection 9 for which the lobbyist has been or expects to be reimbursed . The amount of expenditures for lobbying officials in the legislative branch, officials in the executive branch and constitutional officers must be reported separately; [2007, c. 630, §14 (AMD) .]

E-1. When expenditures for the purposes of indirect lobbying exceed \$15,000 during the month that is the subject of the report, the specific dollar amount of expenditures for indirect

lobbying made or incurred during the month by a lobbyist, lobbyist associate or employer, with separate totals for expenditure categories as determined by the commission, the legislative actions that are the subject of the indirect lobbying and a general description of the intended recipients; [2009, c. 282, §4 (NEW) .]

F. The total amount of expenditures by the lobbyist or the employer directly to or on behalf of one or more covered officials, including members of the official's immediate family; [2007, c. 630, §14 (AMD) .]

G. For any expenditure of money or anything of value made by the lobbyist or employer on behalf of a covered official or a member of the official's immediate family with a total retail value of \$25 or more, the name of the official or family member, the person making the expenditure and the date, amount and purpose of the expenditure ; [2007, c. 630, §14 (AMD) .]

G-1. The date and a description of an event, a list of all officials in the legislative branch or executive branch or members of an official's immediate family in attendance and the total amount of expenditures for the event, if the total amount of the expenditures for officials and family members is \$250 or more; [2007, c. 373, §5 (AMD) .]

H. A list of each legislative action by Legislative Document number, specific issue, nomination or other matter in connection with which the lobbyist is engaged in lobbying; [2007, c. 630, §14 (AMD) .]

I. A list specifically identifying each legislative action for which the lobbyist was compensated or expects to be compensated, or expended in excess of \$1,000 for lobbying activities related to those actions and a statement of the amounts compensated or expended for each; and [2007, c. 630, §14 (AMD) .]

J. A list of all of the employer's original sources and a statement of the dollar amounts contributed or paid by the original sources to the employer. If the original source is a corporation formed under Title 13 or 13-C or former Title 13-A, nonprofit corporation formed under Title 13-B or limited partnership under Title 31, the corporation, nonprofit organization or limited partnership, not the individual members or contributors, must be listed as the original source. [2009, c. 282, §5 (AMD) .]

[ 2009, c. 282, §§4, 5 (AMD) .]

## **2. Annual report.**

[ 2011, c. 179, §5 (RP) .]

**2-A. Electronic filing.** Beginning January 1, 2006, a lobbyist shall file monthly session reports under subsection 1 through an electronic filing system developed by the commission. The commission may make an exception to this electronic filing requirement if a lobbyist submits a written request that states that the lobbyist lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted at least 10 days prior to the deadline for the first report that the lobbyist is required to file for the lobbying year. The commission shall grant all reasonable requests for exceptions.

[ 2011, c. 179, §6 (AMD) .]

**3. Facsimile copies.** The commission may, by rules adopted pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, establish procedures and fees by which facsimile copies of duly executed reports required by this section may be received and filed with the commission.

[ 1993, c. 446, Pt. B, §10 (AMD) .]

**4. Monthly nonsession reports.** When the Legislature is not in regular session, every registered lobbyist must either file:

A. With the lobbyist's last monthly report for that regular session a statement that the lobbyist will not engage in lobbying activities when the Legislature is not in session. The lobbyist is required to file a monthly report for lobbying activity conducted during a special session; or [1993, c. 446, Pt. A, §14 (NEW); 1993, c. 446, Pt. A, §20 (AFF) .]

B. If the lobbyist is engaged in lobbying in any of those months, a monthly report in the manner prescribed in subsection 1 even if compensation or reimbursement for expenses has not been received for the month. [1993, c. 446, Pt. A, §14 (NEW); 1993, c. 446, Pt. A, §20 (AFF) .]

If the lobbyist did not expect to be engaged in lobbying when the Legislature was not in session, the commission may waive the requirement for the months between the end of the session and the renewal of lobbying.

[ 1993, c. 691, §21 (AMD) .]

#### SECTION HISTORY

1975, c. 576, (NEW). 1975, c. 621, §2 (RP). 1975, c. 724, (REEN). 1979, c. 108, §§2,3 (AMD). 1979, c. 632, §2 (RPR). 1985, c. 737, §A8 (AMD). 1987, c. 816, §KK5 (AMD). 1987, c. 868, §1 (AMD). 1989, c. 732, §1 (AMD). RR 1993, c. 2, §1 (COR). 1993, c. 446, §§A14, B7-10 (AMD). 1993, c. 446, §A20 (AFF). 1993, c. 691, §§18-21 (AMD). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B1 (COR). 2001, c. 430, §6 (AMD). 2005, c. 301, §4 (AMD). 2007, c. 373, §§3-5 (AMD). 2007, c. 630, §§14, 15 (AMD). 2009, c. 282, §§4, 5 (AMD). 2011, c. 179, §§5, 6 (AMD).

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**Maine Revised Statutes  
Title 3: LEGISLATURE**

**Chapter 15: LOBBYIST DISCLOSURE PROCEDURES**

**3 MRSA § 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) .]

**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) .]