



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: August 17, 2016

Re: Request for Waiver of Late-Filing Penalty by the Campaign to Regulate
Marijuana Like Alcohol PAC

In the thirteen days before an election, all political action committees, ballot question committees and political parties must file a report within 24 hours of receiving any single contribution of \$5,000 or more or making any expenditure of \$1,000 or more.¹ On June 1, 2016, the Campaign to Regulate Marijuana Like Alcohol PAC (the PAC) made two expenditures for consulting services totaling \$95,752.42. It was required to report these expenditures in a 24-Hour Report by June 2, 2016, but did not do so until July 27, 2016.

LEGAL REQUIREMENTS

PACs are required to report any single contribution of \$5,000 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. § 1059(2)(E)) If the PAC 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. § 1062-A(3)) The

¹ Candidates have a similar 24-hour reporting requirement, except with a lower reporting threshold (\$1,000) for contributions.

statutory maximum penalty under these circumstances is 100% of the amount reported late. (21-A M.R.S.A. § 1062-A(4))

DISCUSSION

On June 1, 2016, the PAC made two expenditures for campaign consultants, one for \$93,252.42 and another for \$2,500.00. These expenditures were not entered into the Commission's e-filing system until sometime in July, which triggered the system to generate a 24-Hour Report for the expenditures. The PAC did not file the 24-Hour Report until July 27, 2016.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals \$95,752.42, the statutory maximum, calculated as follows:

Transactions	Date Due	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
24-Hr Report	06/02/2016	\$95,752.42	2%	55	\$95,752.42*

*the preliminary penalty is capped at 100% of the financial activity reported late

The PAC asks that the Commission waive the penalty due to the disproportionality of the preliminary penalty to the experience of the treasurer and the harm to the public from the late filing. The PAC contends that its treasurer's inexperience qualifies the PAC for a waiver of the preliminary penalty because the treasurer has never served before as the treasurer of a political action committee and is not experienced or conversant with Maine law. In addition, the PAC explains that in the fall of 2015, the treasurer entered two transactions which triggered notices from the Commission campaign finance reporting system that 24-Hour reports were due. When the treasurer spoke with Commission staff, it explained that it did not expect the PAC to file 24-Hour Reports for those transactions

as the PAC was not participating in the November 3, 2015 referendum election.² These experiences, the PAC contends, led the PAC's treasurer to (incorrectly) analogize Commission staff advice regarding off-year referendum and special elections to the 2016 filing schedule.

The PAC also argues that the preliminary penalty is disproportionate to the small amount of harm suffered by the public because of the PAC's late-filing. The PAC notes that the expenditure was for consultants, rather than for communications or other direct advocacy toward voters.³ The PAC also emphasizes that these expenditures were timely filed on the 42-Day Post-Primary Report and thus disclosed to the public three-and-a-half months before the November 2016 election date for this referendum. Finally, the PAC reports that it has reviewed its filing procedures and is now working with local counsel to assist with future reporting.

STAFF RECOMMENDATION

Commission staff is not convinced that a lack of experience by the PAC's treasurer is a significant mitigating factor in this case. The Campaign to Regulate Marijuana Like Alcohol is a project of the Marijuana Policy Project (MPP). MPP is a large, well-organized and financed national organization working to change marijuana laws at the

² Considering the limited number of organizations (PACs, party committees, and BQCs) which are typically involved in off-year and special elections and the burden of reporting compliance which comes with these elections, Commission staff has interpreted the filing schedule statutes and rules to require only those organizations participating in an off-year or special election file the pre-election, post-election, and 24-Hour Reports associated with those elections. We have consistently advised PACs and BQCs that they are required to file 24-Hour Reports during the 13 days before for a primary election – even if their expenditures during that period were not to influence a candidate's nomination.

³ While it has little bearing on the matter at hand, Commission staff disagrees with the PAC's contention in its waiver request that these expenditures on consultants would qualify for the exemption from 24-Hour reporting requirements in 21-A M.R.S.A. §1059(2)(E). Commission staff consider this exemption applies only to "compensation paid to an employee or other member of the campaign staff," not to outside vendors, even if those vendors are providing services traditionally provided by paid campaign staff.

state level. Including Maine, the MPP claims it is currently leading five state ballot initiative campaign, is currently involved in influencing policy in seven states, and that it has been involved in past ballot initiative campaigns in eight states.⁴ Statute allows the Commission to waive a penalty in whole or in part if the penalty is “disproportionate to the level of experience of the person filing the report.” “Person” in Chapter 13 is defined as “an individual, committee, firm, partnership, corporation, association or organization.” (21-A M.R.S.A. §1001(3)) In deciding whether “inexperience” should play a role reducing a penalty, the Commission should not look exclusively, or even primarily, at the experience of the individual filing the report, but instead at the experience of the organization, for the organization is the “person” reporting its financial activity. If an organization as sophisticated as the MPP negligently chose not to prospectively avail itself of competent legal advice regarding its reporting compliance requirements and chose an inexperienced staffer to file its reports, it should not be able to cite that staffer’s inexperience with Maine law as a reason to reduce the penalty for its filing mistake.

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 harm to the public from the late disclosure in this matter is not as critical in this case because the expenditures at question were not made to influence the primary election. Nevertheless, the public was entitled to receive this information on June 2, 2016 and it was not available until July 27. That is a delay of almost eight weeks. The harm to the public – while reduced – is not negligible.

⁴ Marijuana Policy Project, *Campaigns* <[https:// www.mpp.org/about/campaigns/](https://www.mpp.org/about/campaigns/)> (accessed August 8, 2016).

This waiver request concerns a very large amount of financial activity reported late (\$95,752 in expenditures) compared to agenda items #3-#5 (also 24-Hour Reports filed late by PACs). Taking this into consideration, the Commission staff recommends reducing the penalty to \$2,500.

Thank you for your consideration of this memo.



**Bernstein, Shur,
Sawyer & Nelson, P.A.**
146 Capitol Street
PO Box 5057
Augusta, ME 04332-5057

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F (207) 626 - 0200

Katherine R. Knox
(207) 228-7229 direct
kknox@bernsteinshur.com

August 16, 2016

Ben Dyer
Political Committee and Lobbyist Registrar
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: The Campaign to Regulate Marijuana Like Alcohol **Waiver Request** for Late Filing of the 24 Hour Report of Major Contributions and Expenditures

Dear Mr. Dyer:

On behalf of my client, The Campaign to Regulate Marijuana Like Alcohol (“CRMLA” or “Campaign”), and pursuant to 21-A M.R.S.A. §1062(A)(5), I write to request a waiver of the preliminary penalty issued by the Commission staff for late filing of the 24 Hour Report of Major Contributions and Expenditures due on June 1, 2016. The campaign, while properly reporting the expense at issue in its 42-Day Post Primary Report, was not aware that it was also required to file a 24-Hour Report for that expenditure - even though its spending was unrelated to the primary election.

FACTUAL SUMMARY

The Campaign was formed in September 2014 to support a 2016 ballot initiative that would legalize, tax and regulate marijuana. Since its formation, through the signature gathering phase and now the active campaign phase, it has properly reported all contributions and expenditures in compliance with Maine law.

On October 27, 2015, the Campaign filed its first 24-Hour report believing that the accelerated reporting timeline applied. Later that day, Mr. Boyer reported to the Campaign that Commission staff had just called him to say that they did not need to file such reports as it was an off year election. Commission staff then went in and deleted the October 27th report.

August 16, 2016

Page 2

On December 19, 2015, while entering expenditures for an upcoming report, the Campaign received an automatic notice from the filing system stating that it had not properly filed a 24-Hour report due on October 23, 2015. Believing the notice to be an error and relying on their previous experience in October, they did not file the reports. That notice was subsequently cleared from their system and did not appear again.

In June 2016, the Campaign again proceeded to file its regular reports. It did not believe, based on its experiences in October and December of 2015 that the June election would be treated any differently for purposes of 24-Hour reporting. When it proceeded to enter data for the 42-Day Post Primary report, it again received a notice saying it had missed a 24-Hour report. This time, however, that notice was followed by a notice of violation and a preliminary penalty of \$95,752.52.

REQUEST FOR WAIVER OR SUBSTANTIAL REDUCTION

As provided by statute, the campaign respectfully requests that the Commission take the following mitigating circumstances into consideration for reduction of the \$95,752.52 proposed fine.

1. The Preliminary Penalty is Vastly Disproportionate to the Experience of a First Time Treasurer.

First, the CRMLA takes full responsibility for the filing error, and has reviewed the substance and procedure of filing reports with the treasurer to prevent future errors. Additionally, it has hired local counsel to assist with future reporting.

When considering the fine at issue, the statute states that it is highly relevant that treasurer in this case has never worked on a campaign of this nature and has made consistent efforts to be timely and transparent in all reporting. The Treasurer at issue, Mr. Boyer, has never served in such a capacity before. While he is familiar with and committed to the issue of marijuana legalization, he is not experienced or conversant with Maine's election laws. Unfortunately, he wrongly believed that a 24-Hour report was not due under these circumstances. He was aware of the 24-Hour reporting requirement - he just understood based on a previous conversation with staff and the deletion of a prior 24-Hour report that it didn't apply in these circumstances.

Mr. Boyer made every effort to understand the rules but based on a misunderstanding - missed one deadline. The statute contemplates and acknowledges that inexperience can be justification for mistakes and allows you to significantly reduce penalties taking into account that inexperience.

While it is not excusable, the cumulative impact of an inexperienced Treasurer, a conversation with staff and subsequent deletion of a 24-Hour report, and a faulty error

August 16, 2016

Page 3

message was that the Treasurer believed that no 24-Hour Report was required. He maintained that belief until he received the error message and took immediate action to correct the report, reflecting clearly the Campaign's intent and desire to meet in a full and timely manner all required reporting.

Based on the Treasurer's level of inexperience, the fact that the failure to report was an inadvertent and understandable mistake, we respectfully request that the Commission waive or substantially reduce the preliminary penalties.

2. The Preliminary Penalty is Vastly Disproportionate to the Minimal Harm to the Public as the Expenditure at Issue is Not Direct Advocacy to Voters and the Election Was Still Five Months Away.

The CRMLA understand that there are some failures to report that may, in fact, result in meaningful harm to the public and, as such, have taken internal actions to prevent any additional errors. The Campaign also believes that the preliminary penalty of \$95,752.52 is vastly unfair and unjust given the limited harm to the public.

First, the transaction in question does not relate to direct voter advocacy. It was not a media buy, mail piece or other form of advocacy speaking directly to voters in an attempt to persuade them to support a position. The expense was for internal staff consulting - which while critically important - is generally not the type of expense meant to be captured by a 24-Hour report. In fact, going forward, this expense will not qualify for a 24-Hour report even in the approach to the November election - as it is now considered an ongoing monthly expense not subject to 24-Hour reporting. Sadly, if this monthly expense had appeared on a previous report - it would have excused the 24-Hour requirement and we would not be before you today.

Additionally, the expense at issue was properly reported on the 42-Day Post Primary report and properly filed on July 26, 2016. Considering that filing, the electorate was aware of the expenditure a full three and a half months before the vote. This was not a situation where undisclosed, last minute campaign spending influenced the outcome of an election - and those are the very situations 24-Hour Reports seek to prevent.

CONCLUSION

In sum, the campaign acknowledges that a mistake occurred and takes full responsibility for the error. We also contend that a significant and substantial reduction of the proposed \$95,752.52 fine occur. Without a reduction, the proposed fine would dwarf all previous fines issued by this Commission for far more serious violations including fraud and theft. While we understand the voters recently approved a more stringent penalty system, they also left the Commission with broad discretion to reduce those fines as their judgment deems necessary. They did not limit the discretion of the Commission to

August 16, 2016
Page 4

reduce fines, even though they significantly raised the preliminary penalties. Based on the facts outlined above, we believe this mistake justifies the use of that discretion. Quite simply, the imposition of a fine of almost \$100,000 is almost unfathomable for such an understandable mistake which resulted in little harm to the public.

Finally, we want to assure the Commission that the Campaign has been and continues to be firmly committed to the full reporting required to ensure that our elections are transparent and informed. We appreciate your consideration of this request and look forward to answering any questions you may have at the next Commission meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Knox', with a stylized, cursive flourish.

Katherine R. Knox



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

July 27, 2016

David Boyer, Treasurer
Campaign to Regulate Marijuana Like Alcohol PAC
23 Pembroke St #2
Portland, ME 04103

Re: Late Filing of 24-Hour Report

Dear Mr. Boyer,

The Commission staff has made a preliminary determination that the Campaign to Regulate Marijuana Like Alcohol PAC (the PAC) was late in filing the 24-Hour Report required for expenditures made on June 1, 2016. The report was due by 11:59 p.m. on June 2, 2016, but was not filed until July 27, 2016. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1062-A(3)). Based on the amount of financial activity in the report, the number of calendar days the report was late, and the PAC's history of violations, the commission staff has determined that a penalty of \$95,752.52 is owed. (Please see attached penalty matrix for the calculation).

The PAC may make a written request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the PAC filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that the PAC made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

Please call me at (207) 287-6221 or send me an email at benjamin.p.dyer@maine.gov if you have questions.

Sincerely,

A handwritten signature in cursive script that reads 'Benjamin P. Dyer'.

Benjamin P. Dyer
Political Committee and Lobbyist Registrar

Enclosure: payment receipt & penalty matrix

Payment Receipt

Mail payment to:

The Maine Ethics Commission
135 State House Station
Augusta, ME 04333

Make checks payable to: "Treasurer, State of Maine."

David Boyer, Treasurer
Campaign to Regulate Marijuana Like Alcohol PAC
23 Pembroke St #2
Portland, ME 04103

Violation: Late 24-hour Report
Amount Due: \$95,752.52

Committee Name: Campaign to Regulate Alcohol Like Marijuana PAC

Report Title: 24-Hour Report
Due Date: June 2, 2016

Previous Violation(s): NA

Filed Date: July 27, 2016

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, 2%

For the second violation, 4%

For the third and each subsequent violation, 6%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Penalty Example:		Your Penalty is calculated as follows:	
The treasurer files the PAC's report two (2) days late. The PAC has not had any previous late violations this biennium. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is			
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	Contributions / Expenditures:	<u>\$95,752.52</u>
		X	
		Percent Prescribed:	<u>2%</u>
X .02	Percent prescribed for first violation		<u>\$1,915.05</u>
		X	
\$50.00	Two percent of total contributions	Number of days late:	<u>55</u>
X 2	Number of calendar days late		
\$100.00	Total Penalty	Total penalty accrued:	<u><u>\$95,752.52*</u></u>

*** Statutory Maximum**
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 1062-A(4)
\$10,000 for Pre- and Post-Election Reports, Quarterly Reports and 24-Hour Reports, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late.



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

2016 CAMPAIGN YEAR

COMMITTEE		TREASURER
CAMPAIGN TO REGULATE MARIJUANA LIKE ALCOHOL PMB 191, 190 US ROUTE 1 FALMOUTH, ME 04105 PHONE: (207) 274-4633 EMAIL: DBOYER@MPP.ORG		DAVID BOYER 23 PEMBROKE ST #2 PORTLAND, ME 04103 PHONE: (207) 200-6490 EMAIL: DBOYER@MPP.ORG
REPORT	DUE DATE	REPORTING PERIOD
24 Hour Report of Major Contributions and Expenditures	06/02/2016	06/01/2016 - 06/01/2016

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$95,752.42
3. TOTAL DEBTS	\$0.00

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

REPORT FILED BY: DAVID BOYER
REPORT FILED ON: 07/27/2016
LAST MODIFIED: 07/27/2016
PRINTED: 08/16/2016
COMMITTEE ID: 8043

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
6/1/2016	MAINE STREET SOLUTIONS ONE PORTLAND SQUARE PORTLAND, ME 04112	CAMPAIGN STRATEGY CONSULTING PAYMENT OF \$93,252.42 TO SUPPORT: AN ACT TO LEGALIZE MARIJUANA	CNS	\$93,252.42
6/1/2016	VS STRATEGIES LLC 1244 GRANT ST DENVER, CO 80203	CAMPAIGN STRATEGY CONSULTING PAYMENT OF \$2,500.00 TO SUPPORT: AN ACT TO LEGALIZE MARIJUANA	CNS	\$2,500.00
TOTAL EXPENDITURES FOR CANDIDATE:				\$95,752.42



2016 FILING SCHEDULE

FOR ALL POLITICAL ACTION COMMITTEES, BALLOT QUESTION COMMITTEES AND STATE POLITICAL PARTY COMMITTEES

Primary Election June 14, 2016		General Election November 8, 2016	
TYPE OF REPORT	FILING DEADLINE (11:59 P.M.)	REPORT PERIOD	
April Quarterly	April 11, 2016	January 1 — March 31	
11-Day Pre-Primary	June 3, 2016	April 1 — May 31	
42-Day Post-Primary	July 26, 2016	June 1 — July 19	
October Quarterly	October 5, 2016	July 20 — September 30	
11-Day Pre-General	October 28, 2016	October 1 — October 25	
42-Day Post-General	December 20, 2016	October 26 — December 13	
January Quarterly	January 17, 2017	December 14 — December 31	
<p>NEWLY FORMED POLITICAL ACTION COMMITTEES AND BALLOT QUESTION COMMITTEES: All new committees must file an Initial Report at the time of registration. For PACs, the Initial Report covers all activity from the beginning of the year through the date of registration. For BQCs, the Initial Report covers all activity from the beginning of the campaign through the date of registration.</p>			
24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES			
24-HOUR REPORTING PERIOD		WHAT CONTRIBUTIONS SHOULD BE REPORTED	
The reporting period begins 13 days before an election and runs through the day before the election.		Any <u>single</u> contribution of \$5,000 or more received during the reporting period.	
WHEN TO FILE		WHAT EXPENDITURES SHOULD BE REPORTED	
Within 24 hours, including Saturdays and Sundays, of receiving the contribution or making the expenditure, incurring the obligation, or placing the order. Reports can be filed via the committee's electronic filing website.		Any <u>single</u> expenditure of \$1,000 or more made during the reporting period. Orders placed with or obligations made to vendors for goods or services are considered expenditures at the time the orders or obligations are made. Overhead costs, such as rent, taxes, utilities and some salary payments are not required to be reported.	

IMPORTANT INFORMATION

All regular campaign finance reports are due by 11:59 p.m. on the due date. Committee treasurers must enter the required information and click "File Report" by 11:59 p.m. on the filing deadline.

Commission staff will be available until 5:00 p.m. on all filing deadlines to offer assistance. Failure to seek out timely assistance from staff regarding the filing of reports will not be considered a mitigating circumstance if a report is filed late.

Campaign Finance Report Reminder

Attention all Political Action Committees, Ballot Question Committees and State Party Committees.

**11-Day Pre-Primary Campaign Finance reports are due
by 11:59 p.m. on June 3, 2016.**

The report covers the period between April 1, 2016 and May 31, 2016.

Reports must be filed by the deadline regardless of activity.

Log in at www.mainecampaignfinance.com to file the report.

For all organizations: be aware that 24-Hour reporting requirements for large contributions received and expenditures made begin June 1st and last through June 13th.

Please contact (207) 287-4179 or ethics@maine.gov with questions.

Visit the Ethics Commission website at www.maine.gov/ethics for more information.

21-A M.R.S.A. § 1059. REPORT; FILING REQUIREMENTS

Committees required to register under section 1052-A, 1053-B or 1056-B shall file an initial campaign finance report at the time of registration and thereafter shall file reports in compliance with this section. All reports must be filed by 11:59 p.m. on the day of the filing deadline, except that reports submitted to a municipal clerk must be filed by the close of business on the day of the filing deadline.

1. Contents; quarterly reports and election year reports.

[2007, c. 443, Pt. A, §35 (RP) .]

2. Reporting schedule. Committees shall file reports according to the following schedule.

A. All committees shall file quarterly reports:

- (1) On January 15th, and the report must be complete as of December 31st;
- (2) On April 10th, and the report must be complete as of March 31st;
- (3) On July 15th, and the report must be complete as of June 30th; and
- (4) On October 5th, and the report must be complete as of September 30th.

B. General and primary election reports must be filed:

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date.

C. Preelection and post-election reports for special elections or ballot measure campaigns must be filed:

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date.

D. A committee that files an election report under paragraph B or C is not required to file a quarterly report when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C.

E. A committee shall report any single contribution of \$5,000 or more received or single expenditure of \$1,000 or more made after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election within 24 hours of that contribution or expenditure. The 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.

3. Report of expenditures made after the 11th day and more than 48 hours before any election.

[1989, c. 504, §§28, 31 (RP) .]

4. Special election reports.

[1989, c. 504, §§28, 31 (RP) .]

5. Electronic filing. Committees shall file each report required by this section through an electronic filing system developed by the commission. The commission may make an exception to this electronic filing requirement if a committee submits a written request that states that the committee lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted within 30 days of the registration of the committee. The commission shall grant all reasonable requests for exceptions.

21-A M.R.S.A. § 1062-A. FAILURE TO FILE ON TIME

1. Registration. A political action committee required to register under section 1052-A or 1053-B or a ballot question committee required to register under section 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than \$2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

[2013, c. 334, §30 (AMD) .]

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 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to 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 of the committee treasurer 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, §9 (AMD).]

B. An error by the commission staff; or [1999, c. 729, §9 (AMD).]

C. 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. [2007, c. 443, Pt. A, §38 (AMD).]

[2009, c. 190, Pt. A, §29 (AMD) .]



3. 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 period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [1995, c. 483, §21 (NEW).]

B. For the 2nd violation, 3%; and [1995, c. 483, §21 (NEW).]

C. For the 3rd and subsequent violations, 5%. [1995, c. 483, §21 (NEW).]

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 calendar 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 required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

[2007, c. 443, Pt. A, §39 (AMD) .]

4. Maximum penalties. The maximum penalty under this subchapter is \$10,000 for reports required under section 1056-B or section 1059, 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, §49 (AMD) .]

5. Request for a commission determination. If the commission staff finds that a political action committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the treasurer of the political action committee within 3 business days following the filing deadline informing the treasurer that a report was not received. If a political action committee files a report required under this subchapter late, a notice of preliminary penalty must be forwarded to the treasurer of the political action committee whose report is not received by 11:59 p.m. on the deadline date, informing the treasurer of the commission staff finding of violation and preliminary penalty calculated under subsection 3 and providing the treasurer with an opportunity to request a determination by the commission. A request for determination must be made within 14 calendar days of receipt of the commission's notice. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[2013, c. 334, §31 (AMD) .]

6. Final notice of penalty. After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer and the treasurer of the political action committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission.

[2009, c. 302, §9 (AMD) .]

7. List of late-filing committees. The commission shall prepare a list of the names of political action committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1) or section 1059, subsection 2, paragraph C or D within 30 days of the date of the election and shall make that list available for public inspection.

[2007, c. 443, Pt. A, §41 (AMD) .]

8. Failure to file. A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

[2003, c. 628, Pt. A, §8 (AMD) .]

8-A. Penalties for failure to file report. The commission may assess a civil penalty for failure to file a report required by this subchapter. The maximum penalty for failure to file a report required under section 1056-B or section 1059 is \$10,000.

[2009, c. 190, Pt. A, §31 (AMD) .]

9. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[2009, c. 302, §10 (RPR) .]

Title 21-A MRS §1001. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established under Title 1, section 1002.

2. Election. "Election" means any primary, general or special election for state, county or municipal offices as defined in Title 30-A, section 2502, subsection 1.

3. Person. "Person" means an individual, committee, firm, partnership, corporation, association or organization.