

Agenda

Item #8



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: March 26, 2013  
Re: Request for Late Filing Waiver by Candidate Stuart Pennells

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Stuart Pennells was a candidate for the Maine House of Representatives in District #111 in Windham. He was required to file a campaign finance report 42 days after the general election on December 18, 2012. His treasurer was Jeffrey Vermette. The report was filed one day late on December 19, 2012. The preliminary penalty amount is \$24.66.

#### **Request by Candidate Pennells**

Mr. Pennells asked for a waiver of the penalty through a letter dated January 26, 2013. He writes that when his treasurer "attempted to file the report electronically the day" it was due, "the system rejected it."

#### **E-Filing Website**

Almost all legislative campaigns file reports electronically using an e-filing website that was developed for our Commission. When a user (usually the candidate or treasurer) wishes to enter contribution or expenditure information for the campaign, the user goes through the following steps:

- The user logs into the e-filing website using a username and password assigned to the campaign.
- The user selects a campaign finance report (e.g., the 42-day post-general report) from a menu of reports. By taking this action, the user "creates" the report in the database.
- The user begins entering contribution or expenditure information.
- When done entering the information for that sitting, the user can either save the information in the report or file the report.

When the user takes one of these actions, the database makes a record of the date and time on which the action occurred.

The e-filing system is maintained by Quest Information Systems of Indianapolis, Indiana. Bruce Paramore is the regular employee who maintains the software for our office.

### **Recommendation by Commission Staff**

The Commission staff does not see how the description that the treasurer “attempted to file the report” on the deadline of December 18 could be accurate.

For one thing, the e-filing system does not “reject” reports. If reports are incomplete, the system allows the user to file it nonetheless.

Moreover, the e-filing website keeps records of when users log into the system, create reports for data entry purposes, and file reports. In the attached e-mail, our consultant reports that Mr. Vermette took the following actions one day late on December 19:

- Mr. Vermette logged in for the campaign on 12/19/2012 at 2:28 p.m.
- He created the 42-day post-general report on 12/19/2012 at 2:39 p.m.
- Mr. Vermette entered expenditure information into the report.
- He filed the report on 12/19/2012 at 3:13 p.m.

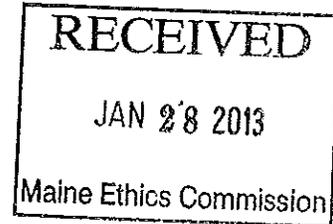
The creation of the 42-day post-general report did not take place on December 18, as Mr. Pennels suggests.

We are sure that Mr. Vermette took these actions on December 19, because he was also the treasurer for another candidate, Gary Plummer. Our e-filing consultant noted that Mr. Vermette used the same IP address for both campaigns. Mr. Vermette successfully filed Mr. Plummer’s report on time during the evening of December 18, but not Mr. Pennels’ report.

The Commission staff’s recommends denying the waiver request and assessing the preliminary penalty amount of \$24.66.

Stuart A. Pennels  
20 Ward Road  
Windham, Maine 04062

January 26, 2013



State of Maine  
Commission on Governmental Ethics  
& election Practices  
135 State House Station  
Augusta, Maine 04333-0135

RE: Waiver to Late filing of 42 Day Post-General Campaign Finance Report

To whom it may concern:

I've was informed by my Campaign Treasurer, Jeff Vermette that when he attempted to file the report electronically the day of the it's suspense that the system rejected it. Furthermore, he communicated the issue on the immediate following business day and at the same time was successfully able to file the report.

The report had been attempted to be filed in good faith and I'm actually unclear as to why this is necessary, since your offices were notified at the time of the problem.

Respectfully request waiver to \$24.66 penalty imposed.

Sincerely,

A handwritten signature in black ink, appearing to be "Stuart Pennels", written over a horizontal line.

Stuart Pennels

**From:** Paramore, Bruce [<mailto:bparamore@questis.com>]  
**Sent:** Tuesday, January 29, 2013 1:41 PM  
**To:** Thompson, Sandy  
**Subject:** RE: Database backup on 12/19/2012

Sandy,

What you are asking is not very easy, though with some work I was able to find out more than I thought was possible.

I started by looking at the records we have for the 42 day post general report for Stuart Pennels (report id 106347). It was created at 2:39 pm on 12/19/2012, data was entered into it, then it was filed at 3:13pm. I was able to find the web records to find that this was done from IP 66.186.164.130. I found that computer logged in at 2:28pm. So that report was not even created until the 19<sup>th</sup>.

Previous to that time, on 12/18, that same computer had logged into entity 5698 (Rep Gary Plummer) at 8:27pm and 9:03pm, and mostly worked on report 104089 (42 day post general for Gary Plummer), and filed amendments to 42 day pre-general and 11 day pre-general for Gary Plummer. The last action taken on the 18<sup>th</sup> was at 9:33pm.

It is possible that the treasurer used some other computer to log into Stuart Pennels account, but he did not work on the 42 day post general report except as noted above.

Bruce Paramore  
Quest Information Systems

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**From:** Thompson, Sandy [<mailto:Sandy.Thompson@maine.gov>]  
**Sent:** Tuesday, January 29, 2013 11:42 AM  
**To:** Paramore, Bruce  
**Subject:** Database backup on 12/19/2012

Dear Bruce: Is there some way you can look at the database backup for 12/19/2012 (occurs around 3am) and determine if entity 6156 (candidate Stuart Pennels) had an "In-Progress" 42-Day Post General Report? The candidate is asking for a late filing waiver because the treasurer had tried to file the report on 12/18/2012 and the system "rejected" the report. The report was eventually filed on 12/19/2012 around 3:30 p.m. If the treasurer did try to file the report (report had transactions entered into it) on 12/18 then it would have had an "In-Progress" status when the backup was done. Thank you.

**SANDY THOMPSON**  
Candidate Registrar  
207.287.3651  
[www.maine.gov/ethics](http://www.maine.gov/ethics)



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

December 24, 2012

**BY CERTIFIED MAIL AND REGULAR MAIL**

Mr. Stuart Pennels  
20 Ward Rd  
Windham, ME 04062

**Re: Late 42-Day Post-General Campaign Finance Report Due 12/18/2012**

Dear Mr. Pennels:

*Preliminary penalty amount.* You filed a 42-Day Post-General campaign finance report on 12/19/2012. 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 \$24.66. (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: Jeffrey Vermette (by regular mail)

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

December 24, 2012

Mr. Stuart Pennels  
20 Ward Rd  
Windham, ME 04062

The Commission staff has calculated a preliminary penalty of \$24.66 for the late filing of your 42-Day Post-General 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

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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. Stuart Pennels

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

Penalty ID: 1967

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

Stuart Pennels

Your penalty is calculated as follows:

Receipts/Expenditures:	\$ <u>2,465.50</u>
Percent prescribed:	<u>1%</u>
	\$ <u>24.66</u>
Number of days late:	X <u>1</u>
Total penalty accrued:	\$ <u>24.66</u>

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.

## 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) .]