Agenda Item #7

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 David Dutremble

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David Dutremble is a first-time candidate for Maine Senate. 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 at 12:23 a.m., which was 24 minutes late. The report (attached) was relatively large for a legislative candidate. In addition to the standard MCEA payment of $18,124 for the general election, the report included 25 expenditures totaling $9,838. Mr. Dutremble was in an opposed primary election.

The amount of the preliminary penalty is $181.24 (one percent of total receipts for the period). Mr. Dutremble requested a waiver of the preliminary penalty in an e-mail sent earlier today at 12:21 p.m. He promptly provided some additional information to me at 2:06 p.m.

Mr. Dutremble requests a waiver because:

- Beginning in late May 2012, his home has periodically lost its internet service, which is outside his control. When this happens, he has to "reboot the system."

- On July 24th while filing the report, he again lost internet service. He continued to reboot the system and was successful at around 11:00 p.m. He began filing the report and missed the deadline by 23 minutes.
- In response to my questions, Mr. Dutremble stated that his house had experienced internet interruptions during the two weeks leading up to the filing deadline and going back to late May. He sat down around 10:00 a.m. on July 24 to work on the report but could not access the internet. At noon, he went to work, and returned at 4:00 p.m. He then left home for his second job at 5:00 p.m. and returned around 9:00 or 10:00 p.m. He then tried to access the internet and had to reboot the modem "several times." Around 11:00 p.m., he had internet service and "at this time began filing my report online."

Mr. Dutremble has not run for legislative or county office before, so he has not been required to file campaign finance reports with the Commission previously. (His campaign treasurer, Richard Dutremble, filed financial reports with our office as a 2006 candidate for York County Commissioner and "no activity" reports when running for re-election in 2010.)

Staff Recommendation

The staff believes a waiver is appropriate, because of the limited level of harm to the public resulting from the late filing. The report was 24 minutes late, and that short period of lateness was around midnight when, presumably, few members of the public were looking for financial information concerning candidates. Also, the Legislature has specifically approved of interruption of internet service as a valid reason for a waiver.

Nevertheless, the candidate knew that his internet service was unreliable, so he could have avoided the lateness by getting an earlier start on the filing. The report was relatively large, because Mr. Dutremble was in an opposed primary election. Filing the report required entering a date, payee, category, remark, and amount for 25 expenditures. The candidate also could have minimized the risk of lateness by relying on another computer (e.g., his treasurer's).

If you are so inclined, the Commission staff believes that there are circumstances present to view Mr. Dutremble's late filing as a little more significant than Mr. Kyricos's late filing. The Kyricos report contained only two expenditures, while the Dutremble report contained 25 expenditures that were late. Also, the staff believes that Mr. Kyricos's lateness was due to genuine confusion as to the duty to file a report, and not from any lack of care.

Nevertheless, I recommend waiving 75% of the preliminary penalty and assessing a penalty of $45.31 (same as Mr. Kyricos), because the preliminary penalty is disproportionate to the level of harm to the public from the late disclosure and because of the interruption in internet service. From your vantage point, the distinctions in the previous paragraph may not seem to justify a higher penalty for Mr. Dutremble. The primary importance of the late filing penalties is to put candidates on notice that they have to take the disclosure deadlines seriously.

Thank you for your consideration of this memo.

From: David Dutremble [mailto:ddutrem1@gmail.com]
Sent: Thursday, August 09, 2012 12:21 AM
To: Thompson, Sandy
Subject: Re: Late filings

Hi Sandy & Ethics Staff;

I am officially requesting a waiver to the 42 day post primary report which was filed online on 7-25-2012 at 12:23am.

We currently use Time Warner for an Internet provider, we began having problems with our cable and Internet service around the 21st of May. My wife had gone to Time Warner in Saco to request a new cable box for our TV, while she was at the office they advised her that we should also try a new cable modem for our Internet. Seeing we were having issues with service, they believed that this would solve some issues and provide better service. We hooked the new Cable Box up and around the first week of June installed the new cable Internet modem. During the next few weeks of June, I had called Time Warner with issues and we were told to reboot our system. We continued to loose Internet on a periodic basis, where I would reset the modem every time we lost service. On July 24th while filing the 42 day post primary report, I again lost Internet service. I continued to reboot the system and was successful at around 23:00 hours. I began filing the report and missed the deadline by twenty three minutes.

So this does not happen again, I have exchanged the modem for a new one. This seems to have corrected the issue with the Internet.

I would appreciate your consideration in receiving a waiver for the late filing of the 42 day post primary report due to Internet connections that was beyond my control.

Sincerely,

David E. Dutremble

From: David Dutremble [mailto:ddutrem1@gmail.com]
Sent: Thursday, August 09, 2012 2:06 PM
To: Wayne, Jonathan
Subject: Re: More Information Concerning Waiver Request

Hi Jonathan,

Here is a response to your questions:

(1) Were there any other interruptions in your internet service during the two weeks leading up to July 24? Please provide a general sense of how many interruptions there were during that two-week period.

Yes, I had been having internet problems on and off, along with loosing Cable TV since the end of May. My Wife had replaced our TV Box at the same time we replaced our Internet Modem. The TV issues seemed to have cleared up but we were still having intermitant Internet issues. I can not give exact dates but yes it was a continuous off and on issue.

(2) On July 24, what time did you begin completing the campaign finance report?

I sat down around ten in the morning but could not access the internet, I then went to work at noon time until I returned home at 4:00pm, I then left to work my second job at 5:00pm and retuning home around 9:00 or 10:00 pm, I then tried to access the internet and had to reboot the modem several times. Around 11:00 pm I gainned internet access and at this time began filing my report online. While doing so I noticed I was not going to make the midnight deadline and ended up filing the report twenty three minutes late at 12:23am on July 25th 2012.

(3) Because you were having trouble with your internet service, did you give any consideration to filing the report using your campaign Ipad, which probably accesses our e-filing website even when your Time Warner service is interrupted?

The Ipad I purchased for the campaign does not have the 3g option inside the Ipad, I had chose for the option of more storage space instead of 3g access because I am always around internet service. I also did not want the monthly expense of paying for the 3g with campaign funds where I was not sure it would be needed.

I hope this helps you in your decision.

Sincerely,

David E. Dutremble

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).]

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. David Dutremble
536 Elm St
Biddeford, ME 04005

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

Dear Mr. Dutremble:

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: Richard Dutremble (by regular mail)

July 30, 2012

Mr. David Dutremble
536 Elm St
Biddeford, ME 04005

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. David Dutremble

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

Penalty ID: 1890

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

David Dutremble

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

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

2012 CAMPAIGN FINANCE REPORT

FOR MCEA CANDIDATES

CANDIDATE	
DAVID E. DUTREMBLE 536 ELM ST BIDDEFORD, ME 04005 OFFICE SOUGHT: SENATE DISTRICT: 4	TEL: (207)229-6587 FAX: E-MAIL: ddutrem1@gmail.com
TREASURER	
RICHARD H. DUTREMBLE 9 BERGERON LANE BIDDEFORD, ME 04005	TEL: (207)284-9055 FAX: E-MAIL:

TYPE OF REPORT	DUE DATE	REPORTING PERIOD
42-DAY POST PRIMARY	07/24/2012	5/30/2012 - 7/17/2012

NO FINANCIAL ACTIVITY IN THIS REPORTING PERIOD FOR SCHEDULES D

CERTIFICATION

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

REPORT FILED BY: DAVID E. DUTREMBLE

REPORT FILED ON: 7/25/2012

IF THIS REPORT IS FILED BY AN AUTHORIZED AGENT OF THE CANDIDATE, THE CANDIDATE, TREASURER AND AGENT ARE LIABLE FOR ANY VIOLATIONS OF MAINE CAMPAIGN FINANCE LAW (21-A M.R.S.A. CHAPTER 13) AND THE COMMISSION'S RULES THAT MAY RESULT FROM THE FILING OF A FALSE OR INACCURATE REPORT.

UNSWORN FALSIFICATION IS A CLASS D CRIME (17-A M.R.S.A. § 453).

SCHEDULE A
MAINE CLEAN ELECTION ACT PAYMENT AND AUTHORIZATIONS
(THIS PERIOD ONLY)

DATE	TYPE	AMOUNT
6/18/2012	MCEA INITIAL PAYMENT - GENERAL	$18,124.00
	TOTAL MCEA PAYMENTS AND AUTHORIZATIONS ⇨	$18,124.00

SCHEDULE B
EXPENDITURES

EXPENDITURE TYPES

CNS	Campaign consultants	POL	Polling and survey research
CON	Contribution to other candidate, party, committee	POS	Postage for U.S. Mail and mail box fees
EQP	Equipment (office machines, furniture, cell phones, etc.)	PRO	Other professional services
FND	Fundraising events	PRT	Print media ads only (newspapers, magazines, etc.)
FOD	Food for campaign events, volunteers	RAD	Radio ads, production costs
LIT	Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL	Campaign workers' salaries and personnel costs
MHS	Mail house (all services purchased)	TRV	Travel (fuel, mileage, lodging, etc.)
OFF	Office rent, utilities, phone and internet services, supplies	TVN	TV or cable ads, production costs
OTH	Other	WEB	Website design, registration, hosting, maintenance, etc.
PHO	Phone banks, automated telephone calls		

Only these expenditure types require a remark: CNS, EQP, FND, OTH, PRO, SAL, TRV.

DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
06/05/2012	MAINELY MEDIA	Kennebunk Post	PRT	$436.80
06/05/2012	YORK COUNTY PUBLISHING	Sun Chronical	PRT	$462.50
05/31/2012	HOYT PRINTING	Palm Cards	LIT	$450.00
06/10/2012	WAL-MART	Post Primary Party	FOD	$351.54
06/10/2012	WAL-MART	Post Primary Party	FOD	$301.10
06/09/2012	SHAW'S	Doors, Doors, Doors	FOD	$243.62
06/10/2012	HAPPY DRAGON	Volunteers - Doors, Doors	FOD	$117.70
07/06/2012	HAPPY DRAGON	Volunteer for Doors / Meeting	FOD	$75.16
06/10/2012	T.J.'S PIZZA	Doors, Signs - Volunteers	FOD	$121.98

06/12/2012	REILY'S BAKERY	Post Primary Party	FOD	$44.40
06/12/2012	AMATO'S	Post Primary Party	FOD	$135.84
07/17/2012	STAPLES		OFF	$913.62
07/17/2012	STAPLES		OFF	$418.80
05/31/2012	PERRY ABERLE	Graphic Design Work	PRO	$750.00
07/10/2012	BRADY'S SCREENPRINT	Advertising - T-Shirts	PRO	$570.00
07/13/2012	BRADY'S SCREENPRINT	Advertising - Crew Sweatshirts	PRO	$913.50
07/17/2012	BRADY'S SCREENPRINT	Advertising - Assorted Campaign Items	PRO	$997.50
05/31/2012	WAL-MART	Ipad, Computer and Accesories	EQP	$775.97
07/17/2012	DAVID E DUTREMBLE	Mileage	TRV	$410.52
07/08/2012	WAL-MART	Advertising - Shirts and Supplies	OTH	$115.45
06/07/2012	ORIENTAL TRADING POST	Candy, Novelties, and Post Primary Party	OTH	$160.90
06/12/2012	DOLLAR TREE	Post Primary Party Supplies	OTH	$39.90
06/12/2012	BRADY'S SCREENPRINT	T-shirts Advertising	OTH	$223.13
06/13/2012	BRADY'S SCREENPRINT	T-Shirts - Advertising	OTH	$787.50
07/17/2012	CHARLENE M DUTREMBLE	Display Materials	OTH	$20.97
			TOTAL EXPENDITURES ⇨	$9,838.40

SCHEDULE E
CAMPAIGN PROPERTY/EQUIPMENT INVENTORY

CAMPAIGN PROPERTY/EQUIPMENT PURCHASED THIS REPORTING PERIOD

DATE PURCHASED	DESCRIPTION OF PROPERTY OR EQUIPMENT	PURCHASE PRICE
5/31/2012	IPAD COMPUTER AND ACCESSORIES	$775.97
7/17/2012	PAPER SHREDDER	$79.99
7/17/2012	IPAD KEYBOARD	$99.99
TOTAL AMOUNT OF PROPERTY/EQUIPMENT PURCHASED DURING THIS PERIOD ⇨		$955.95

SALE OF CAMPAIGN PROPERTY/EQUIPMENT DURING THIS PERIOD

DATE OF SALE	NAME AND ADDRESS OF PURCHASER	DESCRIPTION OF PROPERTY	SALE PRICE
TOTAL PROCEEDS FROM PROPERTY/EQUIPMENT SALES DURING THIS PERIOD ⇨			

ONGOING INVENTORY OF CAMPAIGN PROPERTY

DESCRIPTION OF PROPERTY OR EQUIPMENT	DATE PURCHASED	PURCHASE PRICE	DATE SOLD	SALE PROCEEDS
IPAD COMPUTER AND ACCESSORIES	5/31/2012	$776.00		
PAPER SHREDDER	7/17/2012	$80.00		
IPAD KEYBOARD	7/17/2012	$100.00		
TOTAL AMOUNTS FOR CAMPAIGN ⇨		$956.00		$0.00

DAVID E. DUTREMBLE
SENATE 4

SCHEDULE F
SUMMARY SECTION
(MAINE CLEAN ELECTION ACT CANDIDATES)

CASH ACTIVITY		
	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT	$6,356.82	
2. SEED MONEY CONTRIBUTIONS		$405.00
3. MAINE CLEAN ELECTION ACT PAYMENTS & AUTHORIZATIONS	$18,124.00	$25,482.77
4. SALE OF CAMPAIGN PROPERTY (Schedule E, Part 2)	$0.00	$0.00
5. OTHER CASH RECEIPTS (Interest, etc.)	$0.00	$0.00
6. *MINUS* EXPENDITURES (Schedule B)	$9,838.40	$11,245.35
7. CASH BALANCE AT CLOSE OF PERIOD (lines 1 + 3 + 4 + 5 - 6)	$14,642.42	

OTHER ACTIVITY		
8. IN-KIND SEED MONEY CONTRIBUTIONS		$0.00
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (Schedule D)	$0.00	