

Agenda

Item #2



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

To: Commission Members
From: Jonathan Wayne, Executive Director
Date: September 17, 2008
Re: Request for Waiver of Late-Filing Penalty/Charles Bearce

House candidate Charles Bearce of Bangor was required to file a campaign finance report on July 22, 2008. He filed it six days late on July 28. The amount of the preliminary penalty is \$248.64. He requests a waiver of the penalty due to his mother's recent diagnosis of leukemia. His treasurer is Jerry Sullivan of Bangor.

The Commission staff recommends a partial waiver of the penalty because Mr. Bearce is a first-time candidate and we believe the amount of \$248.64 is disproportionate to the level of harm suffered by the public due to the late disclosure. The report was due roughly 3 ½ months before the election. The only expenditures included in the report were two payments totaling \$84 and one unpaid debt of \$161. The only receipt disclosed in the report was the Commission's payment of \$4,144 in Maine Clean Election Act funds.

The Commission staff performed its routine efforts to encourage timely filing of the report. In addition to mailing a pre-deadline reminder, Candidate Registrar Gavin O'Brien attempted to telephone Mr. Bearce on the July 22 filing deadline because the report had not been filed. Because no one answered, Gavin telephoned the candidate on the following day (July 23) and spoke to him. Mr. Bearce said he would file the report. On July 24, Gavin mailed the candidate a written notice required by statute, which the candidate signed for on July 26. The campaign filed the report on July 28.

With regard to the recent medical diagnosis of the candidate's mother, the staff is sympathetic but the candidate's letter does not explain when the diagnosis was made and how the diagnosis directly impacted the candidate and treasurer's ability to file the report.

The staff recognizes that there is a mix of views among the members of the Commission about granting waivers of late-filing penalties. We respectfully recommend a reduced penalty of \$100 to underscore to Mr. Bearce and other candidates that the campaign filing deadlines are legal requirements, but to avoid a penalty that some might view as excessive.



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

September 15, 2008

By E-Mail and Regular Mail

Charles Bearce
27 Dillingham Street
Bangor, ME 04401

Dear Mr. Bearce:

Thank you for your letter dated September 9, 2008 requesting a waiver of the late filing penalty of \$248.64. The request will be considered by the members of the Ethics Commission at their next monthly meeting, which is scheduled for Monday, September 29 at 9:00 a.m. The meeting will be held in Room 208 of the Cross Office Building next to the State House in Augusta.

You are welcome to rely on your written request for a waiver, or to participate in the meeting in person or by telephone. The members of the Commission may be interested in additional information regarding your request, such as when your mother was diagnosed with leukemia relative to the July 28 filing deadline. Unfortunately, I will not know if they have requests for additional information until the September 29 meeting.

If you or Rep. Tardy would like to participate in the meeting in person or by telephone, I would appreciate you letting me know before September 26. My e-mail address is Jonathan.Wayne@maine.gov and my telephone number is 287-4179. If I do not hear from you, I will assume that you are relying on your letter. Thank you.

Sincerely,

A handwritten signature in black ink that reads 'Jonathan Wayne'.

Jonathan Wayne
Executive Director

cp
cc: Rep. Joshua A. Tardy

**IRWIN
TARDY
MORRIS**

*P.O. Box 476
159 Main Street
Newport, ME 04953*

*207.368.2828 T
207.368.2822 F*

*Joshua A. Tardy
tardylaw@roadrunner.com*

September 11, 2008

Via Facsimile

RECEIVED

SEP 11 2008

MAINE ETHICS COMMISSION

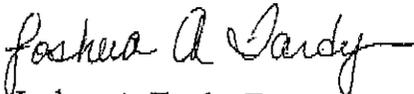
Jonathan Wayne, Executive Director
Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, ME 04333

Dear Jonathan:

I enclose a request for waiver on behalf of Charles Bearce, candidate for State Representative in Bangor.

Please note that Mr. Bearce is a first time candidate. I would be happy to answer any questions you may have about Mr. Bearce's request.

Very truly yours,



Joshua A. Tardy, Esq.

JAT/tmf
Enclosure

Charles Bearce
27 Dillingham St.
Bangor Maine 04401
207- 942-0771
nickbearce@hotmail.com

RECEIVED
SEP 11 2008
MAINE ETHICS COMMISSION

September 9, 2008

Gavin O'Brien
Candidate Registrar
Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta ME 04333

Dear Mr. O'Brien

I would like to request a waiver of the penalty assessed July 28, 2008 in the amount of \$248.64 for the late filing of my 42-Day Post -Primary Report.

At the time of the report deadline, my mother had been recently diagnosed with leukemia. She is 88 years of age and has Parkinson's disease. The Parkinson's has been advancing for over 20 years. She has bouts of dementia, confusion and severe tremors. Although the leukemia has been subsequently more clearly identified as a slow progressing type, it is taking a toll on her.

Thank you for your consideration

Sincerely,

Charles "Nick" Bearce

21-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 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. [1999, c. 729, §5 (NEW).]

[2007, c. 443, Pt. A, §21 (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.

[1995, c. 625, Pt. B, §5 (AMD) .]

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) .]

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 report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at



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

FINAL NOTICE

August 28, 2008

Charles Bearce
27 Dillingham Street
Bangor, ME 04401

BY CERTIFIED MAIL

Dear Mr. Bearce:

The Ethics Commission notified you on July 28, 2008 of the preliminary determination of a penalty in the amount of \$248.64 for the late filing of your 42-Day Post-Primary Report. Our records indicate that you have not paid the penalty or requested a waiver by the Commission.

Please pay the penalty in full within 30 days of the date of this letter. If the Commission does not receive payment, the Election Law requires the Commission to refer the penalty to the Attorney General's Office for collection.

If you would like a waiver of the penalty, you may request a waiver by faxing or mailing a written request within two weeks of your receipt of this letter. The Commission will decide on the waiver request at its September 29 or October 27 meeting. The request can be in the form of a brief letter stating the reasons why the report was late and why a waiver should be granted. The letter may be faxed to 287-6775.

If you have any questions regarding this matter, please telephone me at 287-4709.
Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Gavin O'Brien".

Gavin O'Brien
Candidate Registrar

enc.: Original penalty notice
cc: Treasurer

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS



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

July 28, 2008

Charles Bearce
27 Dillingham Street
Bangor, ME 04401

BY CERTIFIED MAIL

Dear Mr. Bearce:

RE: Late 42-Day Post-Primary Campaign Finance Report Due 7/22/2008.

You filed a 42-Day Post-Primary campaign finance report on 7/28/2008. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$248.64. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

NOTE: The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) 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; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) 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.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Gavin O'Brien
Candidate Registrar

cc: Treasurer

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

July 28, 2008

Charles Bearce
27 Dillingham Street
Bangor, ME 04401

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$248.64 applies for the late filing of your 42-Day Post-Primary campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

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 the full amount of any penalty. Please direct any questions you may have about this matter to Gavin O'Brien at 287-4179.

Cut Along Dotted Line

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

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

From: Charles Bearce

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

Penalty ID: 1449

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)

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

Charles Bearce

Your penalty is calculated as follows:

Receipts/Expenditures:	\$ <u>4,144.00</u>
Percent prescribed:	<u>1%</u>
	\$ <u>41.44</u>
Number of days late:	X <u>6</u>
Total penalty accrued:	\$ <u>248.64</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)

\$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.

3415
June 2007
Priority Mail



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

July 24, 2008

By Certified and Regular Mail

Charles Bearce
27 Dillingham Street
Bangor, ME 04401

Re: Delinquent Campaign Finance Report – Due July 22, 2008

Dear Mr. Bearce:

Our records show that you have not filed your 42-Day Post-Primary Report. State law [21-A M.R.S.A. § 1020-A] requires that a penalty be assessed for late reports based on the amount of financial activity conducted during the filing period, on the number of calendar days a report is filed late, and on the candidate's filing record. If you raised or spent money during the filing period, you could be subject to civil penalties, which are accruing on a daily basis. Once you have filed your report, our office will calculate the penalty and will notify you of the amount. **Therefore, we urge you to file your report as soon as possible.**

Sincerely,

Gavin O'Brien
Candidate Registrar

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> <i>CB</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name) <i>Charles Bearce</i>	C. Date of Delivery <i>7/26/08</i>
1. Article Addressed to: Charles Bearce 27 Dillingham Street Bangor, ME 04401	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

7002 3150 0004 7118 9213

MAINE



Action	Entry Id	Candidate Title	Salutation	First Name	Middle Name	Last Name
called 7/23: he will file	4088	Mr.	Mr.	Charles	R	Bearge
away for 1.5 weeks	4151	Mr.	Mr.	Eimer	F.	Berry
away for 2 weeks	4018	Mr.	Mr.	Ricky	A	Briggs
	4155	Mr.	Mr.	James	F.	Cloutier
called 7/23: expenditure entered in	3798	Ms.	Ms.	Marie		Emerson
called 7/23: will file	4152	Mr.	Mr.	Randall	A	Greenwood
called 7/23: will file	4156	Ms.	Ms.	Diane	Lee	Gurney
called 7/23: will file	4034	Mr.	Mr.	Ben		Lamborn
7/23: left message	4158	Ms.	Ms.	Nancy	L	Larsen
left message 7/23 with candidate	3878	Hon.	Senator	John	L.	Martin
left message 7/23	4009	Ms.	Ms.	Teri	E.	McRae
left message 7/23 with treasurer	4147	Mr.	Mr.	John	B	O'Brien
no answering machine: work num	3642	Hon.	Representative	John	F.	Plotti
phone busy: sent email	3888	Ms.	Ms.	Geraldine	May	Randall
7/23: talked to him: will file	3887	Mr.	Mr.	Mark	S.	Rerrick
7/23: talked to him	3899	Mr.	Mr.	John	P.	Simpson
no answering machine	3664	Hon.	Representative	Douglas	A.	Thomas

Gavin O'Brien's
 notes of calls
 made 7/23/08

Gavin O'Brien's
notes of calls
made on
7/22/08

Notes	Filed Date	Entity_id	First Name	Last Name	Phone1	Phone2
left message on 7/22		4032	Jayson	Allain	(207)564-0007	(207)636-7438
called him on 7/22		4090	Frederick	Austin	(207)368-4056	
called him on 7/22		4145	Leonard	Bartel	(207)786-2701	(207)755-9445
called on 7/22; no answer		4088	Charles	Bearce	(207)942-0771	
called on 7/22; he's in Alaska; no answer		4151	Elmer	Berry	(207)946-3408	(207)786-3737
left message on 7/22		4018	Ricky	Briggs	(207)852-3454	(207)942-6682
talked to him 7/22		3656	Steven	Butterfield	(207)242-7270	
called 7/22		4006	Robert	Carlson	(207)596-2984	(207)594-2955
in the hospital		3965	Michael	Celli	(207)989-4720	
on vacation; left message at home number		4155	James	Cloutier	(207)775-1515	(207)774-7984
called for pw 7/22		3744	Dean	Cray	(207)938-2006	(207)478-8279
left message on 7/22		3801	Andre	Cushing	(207)449-1358	(207)745-6776
talked to him on 7/22		4001	Douglas	Darnon		(207)942-6310
talked to him on 7/22		4056	Daniel	Deveau	(207)868-5469	(207)868-2297
talked to him on 7/22		3944	Steven	Dyer	(207)975-9330	
talked to Candace 7/22		3840	Robert	Eaton	(207)422-3918	(207)422-3918
talked to her 7/22		3798	Marie	Emerson	(207)483-3884	(207)454-1090
talked to him 7/22		3789	Elsie	Flemings	(207)669-2073	(207)288-5015
		4207	Stanley	Ginsh	(207)532-6769	
		3968	Christan	Greeley	(207)884-6000	(207)843-5442
		4152	Randall	Greenwood	(207)375-7188	(207)753-1100
		4156	Diane	Gurney	(207)797-2689	(207)871-8392
talked to Michelle Joyce 7/22		4047	Patrick	Joyce	(207)942-9092	
		3926	Echo	Kaply-Smith	(207)319-8602	(207)319-9966
		3876	Charles	Kruger	(207)354-8159	(207)354-8928
		4034	Ben	Lamborn	(207)884-6767	
		4158	Nancy	Larsen	(207)799-7953	(207)575-6169
		4093	Mark	LeBlanc	(207)825-1016	
talked to him 7/22		3935	Tony	Maker	(207)255-6038	(207)255-8692
		4198	James	Martin	(207)942-7681	
		3878	John	Martin	(207)444-5556	
		4009	Teri	McRae	(207)797-8633	(207)871-8382
talked to her 7/22		3725	Elizabeth	Michaud	(207)764-7010	
		4206	Thomas	Mooney	(207)942-0845	(207)745-3313

*